



**MINUTES OF THE MEETING
OF THE
GOVERNANCE COMMITTEE**

March 20, 2018

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Minutes of the regular meeting of the New York State Canal Corporation's Governance Committee held at the Clarence D. Rappleyea Building, 123 Main Street, White Plains, New York, at approximately 8:00 a.m.

The following Members of the Governance Committee were present:

Eugene L. Nicandri, Acting Chair
Anthony Picente, Jr.
Dennis Trainor

Dr. Anne Kress - Excused
John Koelmel - Excused

Also in attendance were:

Tracy McKibben	Trustee
Gil Quiniones	President and Chief Executive Officer
Justin Driscoll	Executive Vice President and General Counsel
Kristine Pizzo	Senior Vice President - Human Resources and Enterprise Shared Services
Soubhagya Parija	Senior Vice President and Chief Risk Officer
Angela Gonzalez	Senior Vice President - Internal Audit
Robert Piascik	Senior Vice President and Chief Information Officer
Karen Delince	Vice President and Corporate Secretary
Joseph Gryzlo	Vice President and Chief Ethics & Compliance Officer
John Canale	Vice President - Strategic Supply Management
Ruth Colón	Vice President - Enterprise Shared Services
Lorna Johnson	Senior Associate Corporate Secretary
Sheila Quatrocci	Senior Assistant Corporate Secretary
Jaiah Gottor	Lead Network Analyst – Infrastructure
Glen Martinez	Senior Network Analyst – Infrastructure

Acting Chair Nicandri presided over the meeting. Corporate Secretary Delince kept the Minutes.

Introduction

Acting Chair Nicandri welcomed committee members and Authority senior staff to the meeting. He said the meeting had been duly noticed as required by the Open Meetings Law and called the meeting to order pursuant to Section B(4) of the Governance Committee Charter.

1. **Adoption of the Proposed Meeting Agenda**

Upon motion made by Trustee Picente and seconded by Trustee Trainor, the Agenda for the meeting was adopted.

2. CONSENT AGENDA:

Acting Chair Nicandri said that, with the concurrence of the Committee members, the item titled *"Procurement and Related Reports"* will be moved to the Discussion Agenda.

Upon motion made by Trustee Trainor and seconded by Trustee Picente, the Consent Agenda and Reports provided by staff to members of the of the Governance Committee were approved, as amended.

a. **Approval of the Minutes of the
Meeting held on December 12, 2017**

Upon motion made and seconded the Minutes of the meeting held on December 12, 2017 was adopted.

b. Annual Review and Approval of Guidelines for Procurement Contracts, Disposal of Personal Property and Expenditure Authorization Procedures

The Vice President of Strategic Supply Management submitted the following report.

SUMMARY

This report is to request that the Governance Committee review and recommend for approval by the full Board of Directors the revised Expenditure Authorization Procedures ('EAPs'), and Guidelines for Procurement Contracts and for the Disposal of Canal's Personal Property, respectively. The Governance Committee is also requested to review and recommend for approval by the full Board of Directors the revised EAPs, and Guidelines for Procurement Contracts and for the Disposal of Personal Property, respectively.

BACKGROUND

Pursuant to Subsection C.5 of the Corporation's Governance Committee Charter relating to Reports, the Vice President of Strategic Supply Management is required to report to the Committee at all regularly scheduled meetings and the Committee has the authority to require Procurement and other staff to prepare additional reports and to produce documents for the Committee's review.

Exhibit '2b-A' represents the first (original) proposed Guidelines for Procurement Contracts to be presented for review and approval.

There were no changes to the Guidelines for the Disposal of Personal Property; Exhibit '2b-B' (clean copy) has been provided for review for approval.

In accordance with Article VII, Section 5 of the Corporation's By-Laws, the members '...shall adopt expenditure authorization procedures which shall govern the annual budget, capital expenditure plan, contract executions and all approval authorizations.' The Canal Corporation Board adopted initial EAPs in January 2017, and there have been reviews of operational activity supporting EAP levels as well as changes in the organizational structure during this year. Management requests the revised EAPs (attached as Exhibits '2b-C' and '2b-C-1') be presented for Board approval. These exhibits include a clean and original version as redlining was not viable based on the nature of the changes made. The proposed revisions include edits from multiple internal stakeholders made through a collaborative effort to update and simplify the EAP standards.

The reported activities are governed by various State laws and regulations and are set forth in the attached Reports.

DISCUSSION

Pursuant to the Corporation's implementation of the Public Authorities Accountability Act of 2005 ('PAAA'), as amended, the Canal Corporation's Governance Committee reviews the Guidelines for Procurement Contracts and the Guidelines for the Disposal of Personal Property annually, and approves any changes to such Guidelines. Further, good governance dictates that the Canal Corporation's EAPs be reviewed for approval by the Canal Board of Directors. These Guidelines and EAPs have been amended as deemed advisable and necessary.

FISCAL INFORMATION

There will be no financial impact on the Canal Corporation.

RECOMMENDATION

The Governance Committee is requested to review the revisions to the Guidelines and EAPs (as set forth in the copies attached hereto as Exhibits '2b-A' through '2b-C-1') and, if appropriate, to recommend adoption by the full Board at the annual meeting to be held on March 20, 2018."

c. Real Estate Reports

The Vice President of Enterprise Shared Services submitted the following report:

SUMMARY

This report is to advise the Governance Committee of certain 2017 activities of the Real Estate staff regarding the acquisition and disposal of real property.

The Governance Committee is also requested to review and recommend for approval by the full Board of Directors, revised Guidelines and Procedures for the Disposal of the Corporation's Real Property and Guidelines and Procedures for the Acquisition of Real Property by the Corporation.

BACKGROUND

Pursuant to Subsection C.4 of the Corporation's Governance Committee Charter relating to Reports, the Vice President of Enterprise Shared Services is required to report to the Committee at all regularly scheduled meetings, and the Committee has the authority to require Real Estate staff to prepare additional reports and to produce documents for the Committee's review. The 2017 Real Estate report is being submitted by the Vice President of Enterprise Shared Services.

The reported activities are governed by various state laws and regulations and are set forth in the attached Reports.

DISCUSSION

The Report of the Acquisition and Disposal of Real Property for the period January through December 2017 is attached hereto as Exhibit '2c-A.'

Pursuant to the Corporation's implementation of the Public Authorities Accountability Act of 2005 ('PAAA'), as amended, the Corporation's Governance Committee reviews the Guidelines and Procedures for the Disposal of the Corporation's Real Property (attached hereto as Exhibit '2c-B') and the Guidelines and Procedures for the Acquisition of Real Property (attached hereto as Exhibit '2c-C') by the Corporation annually, and approves any changes to such Guidelines. These Guidelines have been amended as deemed advisable and necessary, and reviewed and approved by the full Board of Directors annually, most recently, on September 26, 2017. The Governance Committee is requested to review the revisions to the respective Guidelines and, if appropriate, to recommend adoption by the full Board at the annual meeting to be held on March 20, 2018."

d. 2017 Annual Board of Directors Evaluation Pursuant to Sections 2800 and 2824 of the Public Authorities Law and Guidance of the Authorities Budget Office

The Chair of the Governance Committee submitted the following report:

SUMMARY

The Governance Committee is requested to recommend that the Canal Corporation's Board of Directors approve the annual Board of Directors evaluation summary for 2017 (Exhibit '2d-A') and authorize the Corporate Secretary to submit the summary to the Governor, legislative leaders, the State Comptroller and the Authorities Budget Office ('ABO') pursuant to Section 2800 of the Public Authorities Law, as amended by the Public Authorities Accountability Act of 2005 ('PAAA'), within 90 days of the close of the Corporation's fiscal year.

BACKGROUND

The 2009 Public Authorities Reform Act requires that the board of every state and local public authority conduct an annual evaluation of its performance. Board member comments are protected from disclosure under Article 6 of the Public Officers Law, but the results of the assessment are to be provided to the ABO. To the extent that the results of this evaluation demonstrate the need for the board to improve its performance, amend its practices or procedures, or clarify its expectations of board members, the board is expected to implement suitable corrective actions immediately.

FISCAL INFORMATION

There is no anticipated fiscal impact.

RECOMMENDATION

The Governance Committee is requested to recommend that the Canal Corporation's Board of Directors approve the annual Board of Directors evaluation summary for 2017 and authorize the Corporate Secretary to submit the summary to the Governor, legislative leaders, the State Comptroller and the Authorities Budget Office ('ABO') as required by Public Authorities Law Section 2800."

e. Ethics and Compliance Program and Utility Operations Technical Compliance Report

The Vice President and Chief Ethics Officer and the Vice President of Technical Compliance submitted the following reports:

SUMMARY

The Office of Ethics and Compliance ('E&C Office') advises the NYS Canal Corporation ('Canals') directors, officers and employees on the legal, regulatory and Code of Conduct ethics and compliance standards relating to Canals' employees and operations. It coordinates the investigation of allegations and concerns involving Canals' assets and employees. This report highlights significant developments of the Canals' ethics and compliance program since the most recent Governance Committee meeting on December 12, 2017.

BACKGROUND

NYPA's E&C Office has been responsible for the Canals' Ethics and Compliance program ('E & C Program') since January 1, 2017. Several ethics related cases referred to the NYS Inspector General's Office prior to the Canals' transition from the Thruway Authority to NYPA remain pending. NYPA continues to provide interpretative guidance to Canals' staff and facilitates Canals' compliance with applicable rules and regulations.

DISCUSSION

Communications and Training

The E&C Office facilitated and participated in Government Integrity training provided by the NYS Inspector General's Office at Canals' Headquarters in January 2018 which was also video conferenced to include management staff from several sections. The training content included an overview of the Inspector General's jurisdiction and responsibilities, reviews of the Public Officers Law ethics requirements and the NYS Executive Law obligation of all state employees to report instances of fraud, waste and abuse to the Inspector General and a summary of various cases investigated by the Inspector General, including prior matters involving Canals.

A gifts prohibition and guidance notification memo was issued to all Canals employees in December.

The E&C Office provided Comprehensive Ethics Training to all members of the Canals Recreationway Committee in December 2017, satisfying the NYS Joint Commission on Public Ethics ('JCOPE') requirement that all participants in the annual NYS Financial Disclosure Program receive JCOPE ethics training once every three years. NYPA's Vice President and Chief Ethics & Compliance Officer is certified by JCOPE to present this training to all NYPA and Canals trustees, directors, officers and employees, as well as the members of all external boards affiliated with NYPA and Canals. All Canals staff and affiliated board members subject to this requirement have received training and remain in compliance with JCOPE's mandates.

Emerging Caseload

The graph below illustrates a breakdown of the current Canals ethics inquiries during this reporting period and a summary of 2017 cases. It reflects the types of substantive issues affecting various employees located at multiple Canals facilities. Frequency utilizing NYPA's E&C Office has increased as outreach efforts continue and employees experience productive interactions in response to their inquiries. Canals management has been supportive of the E&C Office's efforts to promote a culture of integrity and transparent conduct.

Several employees reported outside employment activities including a civil engineering business specializing in residential and light commercial properties, a position on a local conservation board and part-time work at a local brewery. These outside engagements were conditionally approved with the provision of ethics guidelines agreed to by the affected employees and their supervisors.

A general inquiry was presented to the E&C Office as to whether NYPA and Canals' employees, as well as other state agency authority employees would be eligible to participate in the 'Re-imagining Canals Competition'. The E&C Office consulted with JCOPE which also requested NYPA's position on this competition. The E&C Office determined that the competition was similar to a publicly noticed, competitive request for proposals, thereby overcoming the Public Officers Law provision restricting State employees from providing goods or services to other agencies in the absence of competitive bidding. Canals and NYPA staff were deemed ineligible to participate in the competition due the appearance of conflicts of interest.

	December-February	2017
Allegations	3	11
Appearance of Impropriety	0	2
Conflicts of Interest	0	1
General Inquiries	0	2
Gifts	3	8
Nepotism	2	24
Outside Activities	0	0
Outside Employment	5	10
Post Employment	1	15
Unwarranted Privilege	1	1
Use of Assets	0	0
Totals	15	74

Financial Disclosure

NYPA completed its annual review and certification of Canals employee profiles in connection with JCOPE's annual Financial Disclosure Program by the February 28, 2018 deadline. This review was also conducted and certified for members of the Canals Recreationway Committee. Canals has 25 participants in the Financial Disclosure Program, including nine designated policy makers, 2 exempt individuals and 14 salary threshold filers. The Recreationway Committee includes seven designated policy makers who are all required to submit Financial Disclosure Statements.

Process Changes

The E&C Office completed the update of the 'Outside Employment and Activities Review' form which is now available on Canals' website for use by employees. Efforts are underway to enable the form to be submitted to the E&C Office for review and approval. The form housed on NYPA's PowerNet page allows for the electronic submission of outside employment requests. Similarly, NYPA's Project Sunlight submissions are largely submitted via an electronic form available on the PowerNet which is routed automatically to the E&C Office for review and action. Full deployment of these electronic tools, for both the collection and dissemination of information between NYPA and Canals staff, will enhance compliance with filing deadlines and create efficiencies.

E&C

The E&C office is currently contemplating a streamlined approval process similar to NYPA's e-Scribe tool, the digital workflow program currently in use for the creation, updating and approval of all NYPA policies and procedures. This effort is an attempt to move the approval process along more expeditiously as required approvals for the hiring of relatives and retirees currently experience delays. The E&C Office will launch this automated initiative at NYPA with the intention of expanding its accessibility to Canals in the near future.

Project Sunlight

Project Sunlight is a publicly available database originating from the 2011 Public Integrity Reform Act ('PIRA') legislation and requires all agencies and authorities to submit information related to meetings between state agencies and authorities and private sector businesses and citizens under five specific categories; procurement of goods and services, ratemaking, the adoption or repeal of a rule or regulation, judicial or quasi-judicial matters and regulatory matters. Canals made 15 entries in the Project Sunlight database during calendar year 2017 and has a total of 29 entries since the database's inception on January 1, 2013.

Ethics and Compliance Office---Compliance Activities

Among various Public Authorities Reform Act ('PARA') statutory requirements, there are certain reports and other information which are legally mandated to be filed with external stakeholders and posted on the Canals website while being kept current throughout the year. The E&C Office is collaborating with Business Services and the Law Department, while working with the relevant NYPA compliance owners to coordinate the identification and posting of these required documents to ensure Canals' PARA compliance.

In addition, all Federal and New York State reporting requirements applicable to Canals have been identified and verified with the appropriate Canals staff. These requirements are currently being populated into NYPA's electronic compliance repository. This inventory will be monitored and updated on an annual basis."

TECHNICAL COMPLIANCE – UTILITY OPERATIONS

"SUMMARY

This report highlights important aspects of NYPA's Technical Compliance support for the Canal Corporation ('Canals') and related integration activities for the period December 12, 2017 to March 20, 2018. A brief background statement is followed by discussion of specific Technical Compliance-related topics affecting the enterprise.

BACKGROUND

As part of the overall integration activities, the following groups within Technical Compliance worked with the Canals and NYS Thruway personnel to ensure a seamless transition for their respective core functions. These groups are Physical Infrastructure Security, Emergency Management, and Code Compliance. Post-integration activities are discussed in this report.

DISCUSSION

Physical Infrastructure Security and Emergency Management

As part of the Utility Operations' team supporting the Canals, Physical Infrastructure Security continued to provide appropriate security access controls. A contract with Champion

Security Services (a NYS Certified SDVOB) continues to be in place with language to support ad-hoc security guard and investigative needs. Physical Infrastructure Security continued to have discussions with key Canals stakeholders regarding the execution of a security assessment. Canals' stakeholders provided a listing of locations and an assessment template was developed. Physical Infrastructure Security and Canals personnel are working together to prioritize the list of locations that will be assessed. Physical Infrastructure Security met with the Canals Security Guard provider to discuss the possibility of using its personnel to gather the initial site specific assessment data. Assessments have begun.

Physical Infrastructure Security received a request from Canals to support the relocation of the Syracuse office and equip the new space with an access control system. A system plan has been developed and a security site walk-down has been scheduled for early March. Physical Infrastructure Security has also received a request to work with Canals to develop and issue Canals' Photo ID Credential. At this time a Canals ID Card Template has been developed and an ID card database has been created. Approximately 85% of Canals' employees have been photographed for their ID Card. Physical Infrastructure Security has also assisted the Canals' stakeholders in a number of security related investigations.

Emergency Management continued to work with a consultant and Canals personnel to develop a work plan in which NYPA and Canals Emergency Management programs are in alignment with immediate needs and long term strategic objectives. The immediate focus of the alignment will be on governance, incident management and response, and drills and exercises.

Code Compliance

As the Canals is not a self-permitting agency under Title 19 – Part 1204, NYPA's Code Compliance Group is the Authority having jurisdiction over any building, premises, and equipment in the custody of the Canals with respect to the administration and enforcement of the Uniform Code.

NYPA's Code Compliance Group continued to work with Canals' personnel in executing its work plan. The following are the major areas with ongoing activities:

- All required Fire Safety inspections for 2017 completed.
- Annual report for 2017 to NY Department of State ('DOS') for construction and inspection activities completed and transmitted to DOS.
- Establishment of Canals as a separate self-permitting agency is on hold pending decision by senior management for establishment of shared services between NYPA and Canals.
- Canals' specific governance procedures have been drafted and are continuing in the review and approval process with final issuance on hold."

3. DISCUSSION AGENDA:

a. Procurement Report (January - December 2017)

The Vice President of Strategic Supply Management submitted the following report:

SUMMARY

This report is to advise the Governance Committee of certain 2017 activities of the Procurement Division (rebranded Strategic Supply Management) of the Canal Corporation including procurement contract activities.

BACKGROUND

Pursuant to Subsection C.5 of the Corporation's Governance Committee Charter relating to Reports, the Vice President of Strategic Supply Management is required to report to the Committee at all regularly scheduled meetings and the Committee has the authority to require Procurement and other staff to prepare additional reports and to produce documents for the Committee's review.

The reported activities are governed by various state laws and regulations and are set forth in the attached Report.

DISCUSSION

As more fully described in the individual report attached hereto as Exhibit '3a-A,' the Procurement Contract Report summarizes activities for procurements of \$5,000 or greater that were active in 2017, as identified by the SAP Enterprise Resource Planning ('ERP') system.

FISCAL INFORMATION

There will be no financial impact on the Canal Corporation.

RECOMMENDATION

The Governance Committee is requested to review and approve the Procurement Report attached hereto as Exhibit '3a-A'."

4. **Next Meeting**

Acting Chair Nicandri said that the next regular meeting of the Governance Committee is to be held on Tuesday, July 31, 2018 at a time to be determined.

Closing

Upon motion made by Trustee Picente and seconded by Trustee Trainor, the meeting was adjourned by the Acting Chair of the Committee at approximately 8:10 a.m.

Karen Delince

Karen Delince
Corporate Secretary

March 20, 2018

EXHIBITS

For

March 20, 2018

Governance Committee

Meeting Minutes

CANAL CORPORATION GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

These Guidelines for Procurement Contracts (“Guidelines”) set forth the policy of Canal Corporation regarding the solicitation and awarding of procurement contracts. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Articles 15-A and 17-B of the Executive Law and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these Guidelines.

2. DEFINITIONS

- A. “Procurement Contracts” are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Canal Corporation offices, facilities, operations and maintenance (“O&M”) and capital projects (as defined in Section 2.O. and 2. P., respectively), including but not limited to goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2.C below.
- B. “Non-Procurement Contracts” include contracts valued under \$5,000 and contracts for the direct placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Canal Corporation participates.
- C. “Services Contracts” are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships or firms who are not and do not employ officers or employees of the Canal Corporation) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by consultant for the Canal Corporation) and construction management. Non-Personal Services include, but are not limited to: skilled or unskilled temporary personnel, including clerical office staff, technicians or engineers working under Canal Corporation supervision; maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services.

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Canal Corporation staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of these factors.

- D. Goods” include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as “Equipment” where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies
- E. “Evaluation of Proposals,” as further set forth in Section 4 below, includes as evaluating factors the Canal Corporation consideration of a bidder’s skill, judgment and business integrity.
- F. “Contact” is any oral, written or electronic communication with the Canal Corporation under circumstances where a reasonable person would infer that the communication was intended to influence the Canal Corporation conduct or decision regarding the procurement.
- G. “Relative” is any person living in the same household as the Canal Corporation employee and any person who is a direct descendant of the Canal Corporation employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines.
- H. “Minority- and Women-owned Business Enterprise” (“MWBE”) is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in the Canal Corporation Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A, and pursuant to the definition found in Executive Law § 310.
- I. “Small Business” (or Small Business Enterprise, “SBE”), pursuant to Executive Law § 310 and as used in these Guidelines, unless otherwise indicated, is a business that has a significant business presence (as defined at 5 NYCRR 140.1) in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.
- J. “Single Source” is a procurement in which the Canal Corporation, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offeror over another that can supply the goods or services.

- K. “Sole Source” is a procurement in which only one offeror is capable of supplying the required goods or services.
- L. “Service-Disabled Veteran-Owned Business” (“SDVOB”) is a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is at least 51% owned by one or more service-disabled veterans; in which such ownership is real, substantial and continuing, and also has and exercises the authority to control independently the day-to-day business decisions of the enterprise; is a Small Business and is certified by the New York State Office of General Services, as further set forth in Article 17-B of the Executive Law.
- M. “Discretionary Purchase” is a procurement made below statutorily established monetary threshold amounts (e.g., not exceeding \$200,000 for the purchase of commodities and/or services from Small Businesses or NYS-certified MWBE or SDVOB firms, and as further set forth in Sections 3.D and 3.K.5-7) and at the discretion of the Canal Corporation, without the need for a formal competitive bid process. For the purpose of determining whether a purchase is within the discretionary thresholds, the aggregate amount of all purchases of the same commodities and/or services to be made within the 12-month period commencing on the date of purchase shall be considered. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities and/or services from the same provider within the 12-month period commencing on the date of the first purchase to an amount greater than \$200,000, pursuant to State Finance Law § 163.
- N. “Disadvantaged Business Enterprise” (DBE) is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, pursuant to the definition found in 49 C.F.R Part 26.
- O. “Operation and Maintenance” (“O&M”) generally refers to the work or services necessary to keep the plants, transmission lines, and other equipment and facilities to include NYPA customers, where authorized, (collectively referred to generally as an “asset”) in optimal operating condition and/or to restore an asset to its productive capacity. This includes the cost of inspecting, testing, analyzing and reporting on the condition of the asset required to determine repairs or replacement, as well as costs associated with the normal operation and administration of NYPA’s production/transmission facilities and energy programs.

- P. “Capital projects” generally refers to the acquisition or construction of new assets, the replacement and/or betterment of existing assets, equipment or property (including those of NYPA’s customers, where authorized). Betterment refers to an extension of the useful life or improvement in the efficiency and/or capacity of the asset, equipment or property.

3. SOLICITATION REQUIREMENTS

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Procurement Department (rebranded Strategic Supply Management, hereinafter “SSM”), or the Canal Corporation Procurement Department, and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (“RFP”) or Request for Quotations (“RFQ”) will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$50,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$50,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance. Whenever possible and practicable, notification of the availability of an RFP and RFQ through the Canal Corporation’s website and/or NYPA’s website should be sent to more than five providers.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation advertised in the same manner as an RFP/RFQ (referred to as a Request for Qualifications and/or Request for Information (“RFI”). In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder’s skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. The Canal Corporation may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Canal Corporation does so at its own cost or expense and will not be reimbursed by the Canal Corporation for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Canal Corporation representative.
- D. In order to promote the use of Minority- and Women-owned Business Enterprises (“MWBEs”), Service-Disabled Veteran-Owned Businesses (“SDVOBs”) and Small Business Enterprises (“SBEs”), the Canal Corporation will solicit offers from such firms known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definitions of NYS-certified MWBE or SDVOB firms and SBEs are set forth in Sections 2.H, 2.L and 2.I, respectively.

To foster increased use of MWBEs, SDVOBs and SBEs, a single proposal may be sought, negotiated and accepted for discretionary purchases of goods and/or services

not exceeding \$200,000, in the aggregate including all amendments, from a NYS-certified MWBE or SDVOB firm or an SBE that offers a reasonable price for such goods and/or services. The award of such proposal requires the written approval of the Vice President of Procurement. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the Vice President of Procurement. Furthermore, the award of such procurement contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.

- E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Canal Corporation will endeavor to promote such participation and to comply with the applicable statutory provisions. In furtherance of Public Authorities Law § 2879, the following definitions and actions apply:
1. “New York State Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Canal Corporation that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Canal Corporation that are substantially performed within New York State as further described in Public Authorities Law § 2879.
 2. “New York State resident” is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
 3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Canal Corporation that are substantially produced outside New York State, or services other than construction services, sought by the Canal Corporation that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
 4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State

Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.

5. Pursuant to Public Authorities Law § 2879, the Canal Corporation shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by the NYPA’s President and CEO if the CEO determines in writing that it is in the best interests of the Canal Corporation to do so, as further set forth in the above-referenced law.
 6. Pursuant to Public Authorities Law § 2879, the Canal Corporation will, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers, as made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.
- F. Certain goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State (e.g., the New York State Office of General Services (“OGS”)) or Federal government (e.g., General Services Administration (“GSA”)) or any city or municipality where the White Plains SSM Department, or Canal Corporation Procurement Department, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Canal Corporation and have approved the specifications and proposed terms and conditions of such contract.

Certain Procurement Contracts established by the OGS or GSA require that authorized users conduct a “mini-bid” (i.e., an abbreviated supplemental competitive bid procurement process) among prequalified bidders identified in such established contracts. Certain other Procurement Contracts issued by the Canal Corporation (e.g., for on-call consulting or contracting services) may also utilize a mini-bid process, typically, in cases of a multiple award, where a contract is awarded to more than one bidder that meets the Canal Corporation bid requirements, in order to satisfy multiple factors and needs as set forth in the bid document. Such mini-bids shall be conducted by the Canal’s Corporation Procurement staff (or on behalf of the Canal Corporation by an Implementation Contractor) where applicable and practicable. Within a said multiple award group, work may be assigned to a specific firm without conducting a mini-bid, under certain circumstances, including but not limited to: where such firm possesses specialized expertise and is uniquely qualified to perform such work; where time constraints, emergency or other critical conditions exist or geographic location is of primary consideration in order to meet schedule requirements, respond to emergent issues or otherwise meet the Canal’s Corporation needs; or when the work scope is below a specified monetary threshold. The decision to assign work without conducting a mini-bid shall typically be made jointly by the Canal Corporation

Procurement Department and initiating departments, and shall be documented for the procurement record.

- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; milestone dates; the Canal Corporation Supplier Diversity Program and SDVOB requirements, if applicable; all other applicable Canal Corporation requirements and any special methods or limitations that the Canal Corporation chooses to govern the work. Telephone solicitation, usually for procurements valued at less than \$50,000, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification. All solicitations made by telephone shall be documented and made part of the Procurement Record.
- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), the Canal Corporation will, prior to soliciting proposals, submit the following information to the Commissioner of the DED to be included on the New York State *Contract Reporter* website, (www.nyscr.ny.gov) (unless such posting would serve no useful purpose): (1) the Canal's Corporation name and address; (2) the solicitation number; (3) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (4) the address where bids or proposals are to be submitted; (5) the due date for bids or proposals; (6) a description of any eligibility or qualification requirements or preferences; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture or coproduction arrangement; (8) any other information deemed useful to potential contractors; (9) the name, address, and phone number of the person to be contacted for additional information and (10) a statement as to whether the goods and/or services sought have, in the immediately preceding three-year period, been supplied by a Foreign Business Enterprise. Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the *Contract Reporter* website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, the Canal Corporation will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on the *Contract Reporter* website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.M, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the NYPA Vice President of Strategic Supply Management (SSM), and/or the head of the initiating department that does not complete its procurements through NYPA SSM or the Canal Corporation Procurement Department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Canal Corporation.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the *Contract Reporter* website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such discretionary contracts not exceeding \$200,000 awarded to Small Businesses or NYS-certified SDVOB or MWBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured, or for the purchase of food, including milk and milk products that are grown, produced or harvested in New York State, and certain other Procurement Contracts exempt from the general advertising requirement for procurement contract bidding opportunities, in accordance with the afore-referenced law. Such notice shall specify the name of the awardee.

- I. In order to further increase participation of service-disabled veterans in New York State's contracting opportunities, the Service-Disabled Veteran-Owned Business ("SDVOB") Act was signed into law on May 12, 2014. The SDVOB program provides for eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business. The Division of Service-Disabled Veterans' Business Development within the New York State Office of General Services ("OGS") is responsible for certifying eligible SDVOBs, assisting agencies and authorities in complying with the law, and promoting SDVOB participation in the state's procurement activities. Under this program, contracts may be awarded on a non-competitive basis to NYS-certified SDVOBs for discretionary purchases not exceeding \$200,000 in the aggregate. Alternately, contracts may be competitively bid exclusively among NYS-certified SDVOBs regardless of value, and advertised as such on the *Contract Reporter* website.
- J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as a Canal Corporation representative, a "competitive search" will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the

work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The NYPA SSM Department or the Canal Corporation Procurement Department staff will work with the initiating department to gather information from potential sources, that will include a description of the consultant/firm's qualifications, résumés of key personnel, past experience and proposed billing rates.

- K. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
 2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
 3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
 4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
 5. The contract is awarded to a Small Business or to a NYS-certified SDVOB or MWBE firm for discretionary purchases not exceeding \$200,000, pursuant to Section 3.D and as further set forth in Section 2.M.
 6. The contract is for the discretionary purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$200,000, as further set forth in Section 2.M and subject to the approvals stated in Section 3.D.
 7. The contract is for the discretionary purchase of commodities that are food, including milk and milk products, which are grown, produced or harvested in New York State, in an amount not exceeding \$200,000, as further set forth in Section 2.M and subject to the approvals stated in Section 3.D.
 8. Purchases made on a Sole Source, Single Source, or other non-competitive basis are subject to Public Authorities Law § 2879-a, 2 NYCRR Part 206, entitled "Comptroller Approval of Contracts Made by State Authorities" ("Comptroller Regulations") and the State Authority Contract Manual.
- L. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Canal Corporation may be required to submit certain contracts to the New York State Comptroller for approval that are awarded on a Sole Source, Single Source, or other non-competitive basis for the purchase of goods and/or services in an amount in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations.

- M. Subject to the Canal Corporation Expenditure Authorization Procedures (“EAPs”), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:
1. A threat to the health or safety of the public or Canal Corporation employees or workers.
 2. Proper functioning of the Canal Corporation facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- N. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the department head or other authorized equivalent per the EAPs will provide a written statement explaining the reasons therefor to the NYPA Vice President, SSM. The award of such Procurement Contracts, regardless of value, requires the written approval of the NYPA Vice President, SSM, except as noted in Section 3.H.
- O. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the NYPA President and CEO or the COO prior to processing by the NYPA SSM Department or Canal Corporation Procurement Department.
- P. In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the NYPA Chief Executive Officer and Chief Financial Officer stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the NYPA Vice President, SSM or authorized designee.
- Q. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Canal Corporation will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§ 139-j and 139-k, the following definitions shall apply:

1. A “Procurement Contract” is any contract or other agreement for a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property that is the subject of a governmental procurement, with an estimated annualized expenditure in excess of \$15,000. Grants, contracts between the Canal Corporation and non-profit organizations pursuant to Article 11-B of the State Finance Law, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions are not Procurement Contracts.
 2. The “Restricted Period” is the period of time commencing with the earliest posting, on the Canal Corporation website, in a newspaper of general circulation, or in the Procurement Opportunities Newsletter (i.e., New York State *Contract Reporter*) in accordance with Article 4-C of the Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerors (i.e., bidders/contractors) intending to result in a procurement contract with the Canal Corporation and ending with the final contract award and approval by the Canal Corporation and, where applicable, the State Comptroller. The “Restricted Period” also applies to a “mini-bid” process that may be utilized in certain established OGS, GSA or Canal Corporation multiple award contracts, as provided in Section 3.F.
 3. The Canal Corporation shall designate a person or persons who may be contacted, with respect to each Canal Corporation procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Canal Corporation’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.
- R. In furtherance of the Canal Corporation commitment to ensure transparency and accountability of its operations, every member, officer or employee of the Canal Corporation who is contacted by a lobbyist is required to make a contemporaneous record of such contact, pursuant to Public Authorities Law § 2987.
- S. Project Sunlight (Chapter 399, Part A, Section 4 of the Laws of 2011) requires the Canal Corporation to record in a database maintained by the New York State Office of General Services certain appearances between the Canal Corporation and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal “Restricted Period.” Covered

individuals at the Canal Corporation means an employee who has the power to exercise discretion in procurement matters or advises someone who exercises such discretion. A covered individual outside of the Canal Corporation means both “external” (e.g., a lobbyist) and “internal” (e.g., sales representative) representatives of an entity, individuals appearing on behalf of him/herself, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to the Canal Corporation Ethics and Compliance Office for recording in the Project Sunlight database.

4. EVALUATION OF PROPOSALS

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not limited to, the bidder’s skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the Canal Corporation Procurement Department and appropriate managers as stipulated in the EAPs. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the NYPA Vice President, SSM or equivalent(s) or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Canal Corporation work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder’s skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task

structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

Another Supplier Diversity Program factor to be considered in evaluating proposals may involve an assessment of the bidder's diversity practices, where applicable. Pursuant to Article 15-A of the Executive Law, diversity practices are the contractor's practices and policies with respect to utilizing NYS-certified MWBEs in contracts as subcontractors and suppliers, and entering into partnerships, joint ventures or other similar arrangements with NYS-certified MWBEs. A contractor's diversity practices may be assessed when: (1) a procurement is awarded on the basis of "Best Value" as described in Section 4.D. (but *not* when a procurement is awarded based upon "lowest price"); (2) the anticipated award is \$250,000 or greater; and (3) such assessment is practicable, feasible and appropriate. Such assessment shall not permit the automatic rejection of a bid or procurement contract proposal based on lack of adherence to diversity practices.

- C. For Services Contracts (as defined in Section 2.C of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts other than Personal Services (as defined in Section 2.C of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents. (See also Section 4.F regarding award to "other than low bidder".)

As a best practice and pursuant to State Finance Law § 163, the Canal Corporation will be transitioning to a "Best Value" basis for awarding contracts for services to the offeror that optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may also identify a quantitative factor for offerors that are Small Businesses or NYS-certified SDVOB or MWBE firms.

- E. Pursuant to § 139-k of the State Finance Law, the Canal Corporation shall not award a Procurement Contract (as defined in Subsection 3.Q.1 of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Canal Corporation policy providing for certain procurement disclosures shall result in a determination

of non-responsibility of such bidder/contractor pursuant to State Finance Law §§ 139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law § 139-k in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to “other than low bidder” can be made only with the approval of appropriate management as stipulated in the EAPs, and should be based on such a proposal providing a clear advantage to the Canal Corporation over the lower-priced proposal. Factors justifying an “other than low bidder” award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; the bidders’ financial resources or the ability to meet or exceed Supplier Diversity Program and SDVOB goals; and overall, the bidder’s skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Canal Corporation may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, the Canal Corporation deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

5. RECOMMENDATION OF AWARD

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
 - 1. Lump sum and/or unit prices for equipment and construction work.
 - 2. Hourly or daily rates for personnel.
 - 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
 - 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.

5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any, as well as Supplier Diversity Program requirements, as applicable.

6. AWARD OF CONTRACT

- A. Services Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months are approved and reviewed annually by the Canal Corporation Board of Directors. Services Contracts for a period of less than 12 months are approved by authorized designees in accordance with existing EAPs. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Canal Corporation Board of Directors at the request of the initiating department and will be reviewed by the Canal Corporation Board of Directors annually. Extending a contract for services, that has previously been approved by the Canal Corporation Board of Directors, for a cumulative term of more than 12 months requires further Canal Corporation Board of Director approval. Extending a contract, previously approved by the Canal Corporation Board of Directors, for 12 months or less (“grace period”) requires approval by the NYPA Vice President, SSM of the requesting department or other authorized equivalent or designee in accordance with existing EAPs and concurrence by the NYPA Vice President, SSM.
- B. For Services Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Canal Corporation Board of Directors meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total term and value, such contract must be approved in writing by the appropriate management as set forth in the EAPs. Such contract is subject to the Canal Corporation Board of Directors’ approval, at the next quarterly Canal Corporation Board of Directors’ meeting. If such approval is not granted, the contract will be terminated immediately.
- C. A contract or contract task valued or estimated to be \$5,000 or greater is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any “continuing services” contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Canal Corporation Board of Directors-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a “Change Order,” “Purchase

Order” or “Task Number”) is considered a separate commitment and must be separately approved in accordance with the EAPs.

- D. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions.
- E. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAPs, the Department Head, with the prior concurrence of the NYPA Vice President, SSM or equivalent(s) or designee, may authorize extending such contract, subject to the Canal Corporation Board of Directors ratifying such action as soon as practicable.
- F. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAPs, interim approval by the NYPA President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Canal Corporation Board of Directors ratifying such action as soon as practicable.
- G. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAPs, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the NYPA Vice President, SSM or equivalent(s) or designee, may authorize in writing the commencement of such services. The initial compensation limitation may not exceed the authorization level for the NYPA President and Chief Executive Officer or equivalent(s) or Chief Operating Officer or equivalent(s) as set forth in the EAPs. Such contracts will be subject to the Canal Corporation Board of Directors approval, which will be solicited at their next scheduled Canal Corporation Board of Directors meeting.
- H. The NYPA SSM or the Canal Corporation Procurement Department prepares the contract for execution by the Canal Corporation and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Canal Corporation signatories of such letters must be authorized to approve contract awards pursuant to the EAPs.
- I. Pursuant to Public Authorities Law § 2879, the Canal Corporation shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneously with notifying the successful bidder therefor. The Canal Corporation shall not enter into the Procurement Contract for

said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the NYPA SSM Department or Canal Corporation Procurement Department: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.

Canal Corporation departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the NYPA SSM Department and the Canal Corporation Procurement Department, which are responsible for requesting proposals.

- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.
1. Schedule of Services or Specifications
 2. Time of Completion
 3. Compensation or Itemized Proposals
 4. Relationship of Parties
 5. Delays
 6. Termination
 7. Changes in the Work
 8. Claims and Disputes
 9. Warranty
 10. Insurance
 11. Records, Accounts, Inspection and Audit
 12. Assignment
 13. Notices

14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. MWBE requirements
19. SDVOB requirements
20. Entire Agreement

Contract Attachments

1. Compensation Schedule
 2. Schedule of Services or Specifications
 3. Appendix “A” (Miscellaneous Statutory Provisions)
 4. Appendix “B” (Prompt Payment Provisions)
 5. Appendix “C” (Minority- and Women-owned Business Enterprise (MWBE) Participation Goal Requirement)
 6. Appendix “D” (Background Security Screening for Authority Contractors)
 7. Appendix “E” (Omnibus Procurement Act of 1992 Requirements)
 8. Appendix “F” (Computer Aided Design Requirements For New York Power Authority Drawings)
 9. Appendix “G” (Equal Employment Opportunities Requirements)
 10. Appendix “H” (Tax Law Requirements)
 11. Appendix “I” (New York Power Authority (NYPA) North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) Cyber Access And/Or Unescorted Physical Access Training Requirements)
 12. Appendix “J” (Bidder/Contractor Compliance with State Finance Law §§ 139-j and 139-k Providing for Certain Procurement Disclosures)
 13. Appendix “K” (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub. L. No. 111-5 Stat. 2009) (“ARRA”) Funded Projects) - inactive
 14. Appendix “L” (DOE Federal Contract Provisions) - inactive
 15. Appendix “M” (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology (“BART”) for Heavy Duty Vehicles)
 16. Appendix “N” (The New York State Iran Divestment Act of 2012 – Iranian Energy Sector Divestment)
 17. Appendix “O” (Encouraging Use of New York State Businesses in Contract Performance) – inactive
 18. Appendix “P” (Information Security Requirements for Vendors and External Partners)
- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services.

Furthermore, any firm, person or other entity retained by the Canal Corporation to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work.

The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal;
3. There is no qualified response to the solicitation for future phases of work, including implementation; or
4. The originating Canal Corporation Department determines in writing that the restrictions are not in the best interests of the Canal Corporation. Such originating Department shall obtain the approval of the applicable Department Head or equivalent(s), NYPA Vice President, SSM or equivalent(s) or designee, NYPA Assistant General Counsel or equivalent(s) and NYPA President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

8. CHANGE ORDERS

A. Change Orders to existing contracts are justified in the following cases:

1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
3. To accommodate emergency conditions, defined in Section 3.M herein, that require the immediate performance of work by a firm already under contract;
4. When rebidding would not be practical or in the best interests of the Canal Corporation customers; and
5. To meet the Canal Corporation Supplier Diversity and SDVOB Program goals in accordance with Executive Law Articles 15-A and 17-B, respectively.

B. All Change Orders must be approved in accordance with the Canal Corporation EAPs, and should include specific schedules for completion of work at the earliest possible time.

- C. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Canal Corporation may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.

9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES

- A. Former Canal Corporation officers and employees may be eligible to be considered for direct engagement as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their engagement is not barred by New York Public Officers Law § 73(8); they obtain an opinion by the New York State Joint Commission on Public Ethics that such engagement is permissible; and upon approval of the NYPA President and Chief Executive Officer, as well as the Chairman of the Canal Corporation Board.
- B. Pursuant to the provisions of New York Public Officers Law § 73(8):
 - 1. No Canal Corporation officer or employee is eligible, within a period of two years after the termination of Canal Corporation service to appear or practice before the Canal Corporation or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Canal Corporation.
 - 2. No Canal Corporation officer or employee is eligible, at any time after the termination of Canal Corporation service, to appear, practice, communicate or otherwise render services before the Canal Corporation or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.
 - 3. Pursuant to the provisions of New York Public Officers Law § 73(8-b), notwithstanding the provisions of 1. and 2. above, a former Canal Corporation officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to the Canal Corporation, if, prior to engaging in such service, the Chairman of the Board of Directors certifies in writing to the New York State Joint Commission on Public Ethics that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the Canal Corporation needs and is otherwise unavailable at a

comparable cost. Where approval of the contract is required under § 112 of the New York State Finance Law, the Comptroller shall review and consider the reasons for such certification. The New York State Joint Commission on Public Ethics must review and approve all such certifications.

- C. No Canal Corporation employee who is involved in the award of Canal Corporation grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- D. No Canal Corporation employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Canal Corporation employee may take part in any contracting process or decision: (i) to a Relative; or (ii) to any entity in which the Canal Corporation employee or a Relative of such Canal Corporation employee owns or controls 10% or more of the stock of such entity (or 1% 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. If a contracting matter arises relating to this Section 9.E, then the employee must advise in writing his or her supervisor and the Office of Ethics and Compliance of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
 - 1. For purposes of this Section 9.E, the term "Relative" is defined in Definitions, Section 2.G of these Guidelines.

10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS

The Canal Corporation strives to continue to foster the development of business opportunities on Canal Corporation contracts for MWBEs. Article 15-A of the Executive Law established the NYS Office (now Division) of Minority and Women's Business Development ("DMWBD") that is responsible for developing rules and regulations for implementation of this statute, certifying MWBEs and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an MWBE is included in Section 2.H of these Guidelines. The Canal Corporation aims to solicit proposals from NYS-certified MWBEs that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services

requiring the contractor/vendor to subcontract a portion of the work to NYS-certified MWBEs as required by law. Bidders' proposals will include a completed preliminary Utilization Plan Form for MWBEs, as well as applicable EEO and Diversity Practices Forms, where required. Such bidders' failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award. Final MWBE Utilization Plans for Construction contracts valued at more than \$100,000 shall be provided and posted on the Procurement website by the successful vendor within ten business days of contract signing.

Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Canal's Corporation Supplier Diversity Program documents, the following guidelines apply:

1. Identify those areas or types of contracts for which MWBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.
2. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve MWBEs providing the types of services procured by the Canal Corporation.
3. Maintain lists of qualified NYS-certified MWBEs, including professional firms that have expressed an interest in doing business with the Canal Corporation and ensuring that such lists are updated regularly. The Canal Corporation shall also consult the lists of NYS-certified MWBEs maintained by the DED pursuant to Executive Law Article 15-A.
4. Establish appropriate goals for participation by MWBEs in procurement contracts awarded by the Canal Corporation and for the utilization of MWBEs as subcontractors and suppliers by entities having procurement contracts with the Canal Corporation. Statewide numerical participation target goals shall be established by the Canal Corporation based on the criteria set forth in Public Authorities Law § 2879.
5. Conduct procurements in a manner that will enable the Canal Corporation to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by MWBEs in the Canal's Corporation procurements.
6. Designate one or more senior staff of the Canal Corporation to oversee the Canal's Corporation programs established to promote and assist participation by and utilization of NYS-certified MWBEs.

11. SERVICE-DISABLED VETERAN-OWNED BUSINESS ("SDVOB") PROGRAM REQUIREMENTS

The Canal Corporation also strives to foster the development of business opportunities for NYS-certified SDVOBs and to further increase participation by SDVOBs in Canal Corporation contracts, as set forth in Sections 2.L and 3.I of these Guidelines and pursuant to Article 17-B of the Executive Law. One tool is the use of SDVOB discretionary

purchasing, as further described in Sections 3.D, I and K of these Guidelines. Another tool authorized by the law is the use of set-asides, which permit the reservation in whole or in part of certain procurements by state agencies and authorities when more than one NYS-certified SDVOB is available and can provide the necessary goods or services to meet the Canal Corporation form, function and utility. The same dollar limits apply to SDVOB contracts as those set forth for MWBEs in Article 10 of these Guidelines.

Pursuant to Article 17-B of the Executive Law, the following guidelines apply:

1. Identify contracts where SDVOBs may best perform and/or where SDVOB goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOB participation on Canal Corporation contracts.
2. Submit regular reports with respect to SDVOB Program activity, including but not limited to, utilization reporting and contract monitoring and compliance.
3. Achieve an overall goal of six percent for SDVOB participation on Canal Corporation contracts.

12. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM
REQUIREMENTS ON PROJECTS THAT ARE FEDERALLY FUNDED

The Canal Corporation (“Canals”) strives to foster the development of business opportunities for NYS certified DBEs and to further increase their participation in Canals Federally funded contracts. The Canals aims to solicit proposals from DBEs for procurements that will be partially or fully federally funded. The Canals follows the DBE guidelines as set out by The Federal Department of Transportation (“DOT”). NYS DOT is tasked with certifying eligible small businesses as DBEs in New York State.

The Canals is committed to promoting participation of DBEs in Canals contracting opportunities in accordance with federal law and regulations and seeks to achieve the following objectives:

1. To ensure nondiscrimination in the award and administration of Federally funded contracts in the canals and waterways;
2. To create a level playing field on which DBEs can compete fairly for Federally funded contracts;
3. To ensure that the Canals’ DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this Federal eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in Federally funded contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

13. PROCUREMENT RECORD AND REPORTING

A. Procurement Record

The NYPA SSM Department or the Canal Corporation Procurement Department maintains records of Procurement Contracts. In addition to bid- and contract award-related documents for the goods provided and/or services performed, the Procurement Record includes, but is not limited to, documentation of the decisions made and the approach taken in the procurement process. Such records may be transmitted to a digital warehouse for electronic storage and retrieval.

B. Procurement Report

After the end of each calendar year, the NYPA Vice President, SSM or equivalent(s) will prepare and submit an annual report to the Canal Corporation Board of Directors for their approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A list of fees, commissions or other charges paid;
5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified MWBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
6. The type of contract (equipment, services, personal services or construction);
7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
8. The reasons why any procurements with a value equal to or greater than \$50,000 were not noticed in the Contract Reporter;
9. The number of bids received and
10. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.

- C. Such annual report, as approved by the Canal Corporation Board of Directors, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, and copies thereof shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual procurement report is posted on the Canal Corporation website and copies shall be made available to the public upon reasonable written request therefor.
- D. State Finance Law §§ 139-j and 139-k
1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§ 139-j and 139-k only) and the Canal Corporation decision not to award a bidder/contractor the Procurement Contract must be included in the procurement record.
 2. The Canal Corporation shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§ 139-j and 139-k only) or debarred due to violations of § 139-j of the State Finance Law.
 3. All forms entitled "Record of Contact" shall be included in the respective procurement record.
 4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the procurement record.
- E. The Canal Corporation may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as Canal Corporation's Budget Office through the Public Authorities Reporting Information System ("PARIS").
- F. The NYPA Vice President, SSM or equivalent(s) will also prepare Annual Goal Plans for the MWBE and SDVOB programs and will submit them by January 15 of each year to Empire State Development - Division of Minority and Women Business Development and the New York State Office of General Services - Division of Service-Disabled Veterans' Business Development, respectively. Quarterly Utilization / Activity Reports for each program will also be prepared and submitted to the aforementioned respective state entities by the 15th day of July, October, January and April.

14. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of the Canal Corporation only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.

- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

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Revision Date(For BCG Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
7/30/2017	0	Policy for the Disposal of Canal Corporation Personal Property	N/A	Kevin King Director Transactional Procurement

Title: Guidelines for the Disposal of Canal Corporation Personal Property

Guidelines for the Disposal of Canal Corporation Personal Property

1 PURPOSE AND SCOPE

This Policy for the disposal of Canal Corporation (“Corporation”) Personal Property, (“Policy”) which complies with Title 5-A, Article 9 of the Public Authorities Law, establishes the Corporation’s Policy and instructions regarding the use, award, monitoring and reporting of the disposal of personal property. In addition, the Policy designates a Contracting Officer who is responsible for the Corporation’s compliance with, and enforcement of, the Policy.

The powers and duties relating to the New York State canal system, which were transferred to and merged with the New York Power Authority (“Authority”) pursuant to Canal Law Section 5, may be exercised by the Authority directly or through the Corporation on behalf of the people of the State of New York.

2 APPLICABILITY

This Policy applies to all New York State Canal Corporation employees who intend to dispose of personal property owned by the New York State Canal Corporation.

3 INITIALISMS (ACRONYMS) AND DEFINITIONS

Abandoned Motor Vehicles – An Abandoned Motor Vehicle is a type of Tangible Personal Property with special statutory and regulatory requirements for disposal and processing (see Section 5.2.A.).

Abandoned, Lost or Found Personal Property – Abandoned, Lost or Found Personal Property that remains unclaimed after notification to an owner, if known, and/or after being held for the required holding periods as prescribed by statute. This includes all lost or mislaid property found on Corporation property/premises, as well as property which is knowingly abandoned.

Contracting Officer – Shall mean the officer or employee of the Corporation who shall be appointed by resolution of the Canal Board to be responsible for the disposition of Personal Property. The “Contracting Officer” is hereby designated to be the Authority’s Vice President - Procurement or equivalent(s) by law.

Corporation – Canal Corporation

Disposals – Disposals include the sale of Personal Property, the transfer of title or any beneficial interest in Personal Property in accordance with this Policy such as leases, and the exchange of Personal Property. Disposals do not include permits, licenses or temporary use documents that are otherwise revocable due to operational requirements or in the best interests of the Corporation. Consistent with prior Board action, permits do not convey or transfer a beneficial interest in the Personal Property.

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Fair Market Value – Shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by consulting industry-recognized sources, contracting original suppliers, depreciation analysis, appraisals, fair market valuations by public auction or other methods of valuation generally accepted in the industry in which such Property is utilized, as may be approved by the Contracting Officer or authorized designee.

Personal Property – Property, other than Real Property, owned by the Corporation, regardless of value, and any other interest in such property, 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. Property may include, but is not limited to, materials (Canal Corporation Warehouse controlled inventory and Direct Turnover Materials DTO), tools, equipment or vehicles. Section 2895 of the Public Authorities Law defines property as Personal Property in excess of \$5,000 and does not include the transfer of Personal Property secured by a loan or other financial obligation of another party.

Real Property – shall mean real property, including land, tenements and hereditaments owned by the Corporation, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

Transactions – For purposes of this Policy, transactions shall include, but not be limited to, disposals and the issuance of permits, licenses and other temporary use documents for the use of Personal Property.

4 RESPONSIBILITY

The Board shall adopt by resolution, this Policy for the Disposal of Canal Corporation Personal Property and by such resolution, designate a Contracting Officer who is responsible for compliance with and enforcement of this Policy.

All Transactions shall comply fully with applicable state, federal and local laws, rules and regulations as well as policies, procedures and executive orders including, but not limited to, the Canal Law, the Abandoned Property Law, the Personal Property Law, the Public Authorities Law, the Vehicle and Traffic Law and any subsequently enacted statutes, rules and/or regulations.

The Corporation Deputy Director is authorized to interpret, implement, and administer this Policy and shall develop procedures necessary to carry out its intent, as well as to delegate such authority to members of his/her staff. These procedures should identify the roles and

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responsibilities of Corporation personnel who implement and administer this Policy and define the manner in which those responsibilities are to be fulfilled. The Deputy Director is also authorized to oversee the actions of Corporation staff to ensure compliance with applicable laws, rules and regulations, and with this Policy.

The Deputy Director may delegate, expressly in writing, directly to the Contracting Officer, the authority to sign and execute any and all documents related to any form of property auction or other disposal methods and may also authorize the Contracting Officer to further delegate such authorization to other members of his/her staff in order to carry out the intent of this current Policy.

The Manager, Administrative Services ensures that Personal Property is disposed of in accordance with this Policy and that each disposal is documented, including photo(s) of material/item, fair market evaluation, environmental documentation, accounting records, RFQs and bid abstracts, award documents, copies of payment check or wire service receipts, and signed sales agreements.

5 POLICY IMPLEMENTATION

5.1 General Principles

The Corporation shall maintain adequate inventory controls and accountability systems for all Personal Property under its control.

- A. Personal Property that is 1) encroaching on real property under the jurisdiction of the Corporation; or 2) located on real property under the jurisdiction of the Corporation that is: (a) not authorized by the applicable permit, license or lease; or (b) left behind following the expiration, revocation or termination of a permit, license or lease; shall be handled in accordance with this Policy, the terms and conditions of the lease, license or permit regarding the removal of such property, and/or the Canal Law, if applicable.
- B. The Corporation may dispose of any Personal Property not necessary for its corporate purposes in whatever timeframe that either the Contracting Officer or the Corporation Board deems appropriate.
- C. The Corporation may authorize the use of Corporation Personal Property by an entity for any period or term using a temporary, revocable permit, license or other document that does not transfer a beneficial interest in the Personal Property. Such temporary, revocable use is not considered a Disposal for purposes of this Policy.
- D. Personal Property shall not be disposed of by the Corporation for less than fair market value, except in limited circumstances as set forth in Paragraph E, sections 1, 2 and 3 below. Fair Market Value may be determined through the use of appraisals, requests for proposals, the bid or auction process, or other means.

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- E. No asset owned, leased or otherwise in the control of the Corporation with a value in excess of \$5,000 may be sold, leased, or otherwise alienated for less than its fair market value except if:
1. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
 2. the purpose of the transfer is within the purpose, mission or governing statute of the Corporation; or
 3. in the event the Corporation seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the Corporation's mission, purpose or governing statutes, the Corporation shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the legislature receives notification of a proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the Corporation may effectuate such transfer.
- F. In the event a below fair market value asset transfer is proposed, the following information must be provided to the Corporation Board and the public:
1. a full description of the asset;
 2. an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Corporation Board;
 3. 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, if any, to the communities in which the asset is situated as are required by the transfer;
 4. a statement of the value to be received compared to the fair market value;
 5. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (4) of this paragraph, a statement of the value to the private party; and
 6. the names of any other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
- G. Before approving the disposal of any property for less than fair market value, the Corporation Board shall consider the information described in paragraph F of this section

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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.

- H. The Corporation must use a competitive process as required by the Public Authorities Law and related statutes, including public advertising for Disposals exceeding \$15,000 in value, except in limited circumstances. In order to dispose of Personal Property by negotiation or public auction without public advertising, but subject to obtaining competition as is feasible under the circumstances, one of the following must be met:
1. 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 public advertising, 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;
 2. The fair market value of the property does not exceed \$15,000;
 3. Bid prices after advertising are not reasonable, either as to all or some part of the Personal Property, or have not been independently arrived at in open competition;
 4. The Disposal will be to the State or any political subdivision, and the estimated fair market value of the Personal Property and other satisfactory terms of disposal are obtained by negotiation;
 5. Under those circumstances permitted by Section 5.1 (Paragraphs E, F, and G) of this Policy; or
 6. The action is otherwise authorized by law.
- I. For Personal Property valued at over \$15,000 disposed of by negotiation, an explanatory statement is required. Not less than 90 days in advance of the Disposal, an explanatory statement shall be prepared and distributed by the Contracting Officer in accordance with Public Authorities Law §2897, detailing the circumstances of the Disposal including, but not limited to, the proposed price.
- J. The Corporation shall create a clear and comprehensive record for each Transaction that documents its compliance with this Policy. Such record shall be maintained in a manner and for a period consistent with the applicable document retention policy.

5.2 General Practices

- A. Abandoned Motor Vehicles - The handling and disposal of Abandoned Motor Vehicles is statutorily covered under Vehicle and Traffic Law and not under this Policy.
- B. Abandoned, Lost or Found Personal Property

Abandoned, Lost or Found Personal Property with a value over the statutory limits must, within ten days after the finding or acquisition by Corporation employees or the

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Corporation's related agents (for example, contractor), be turned over to Troop T for processing and forwarding to the Bureau of Office and Building Maintenance Services (Office Services) at Headquarters in Albany. Office Services will return the property to the owner, if known; if the owner of the property is not immediately known, then the property must be held until the statutory holding period has run. At that time, if the property has not been claimed by the true owner or someone with verifiable ownership rights, then Office Services shall return the property to the known independent finder. If the original finder was a Corporation employee or one of its related agents as defined above, ownership then vests in the Corporation and may be treated as other Corporation owned property.

C. Special Abandoned Personal Property

1. Personal Property purposely left behind on Corporation property after termination of a previously issued permit, license or lease shall be handled, removed or disposed of under the terms of the permit, license or lease, or if required, pursuant to the applicable provisions of the Canal Law governing encroachments.
2. Abandoned Personal Property originally issued by the Corporation such as unclaimed wages or benefits, or unclaimed consumer balances shall be held for the required holding times as prescribed by the Personal Property Law and Abandoned Property Law, at which time the property vests in the Corporation.
3. Other Personal Property such as unclaimed bonds, dividends, interest, securities, etc. owed to security holders shall be held for the required statutory periods by the Corporation's properly delegated trustees or other fiduciaries.

D. Surplus Personal Property

The (Manager, Administrative Services) will provide the (Deputy Director) or designee with information on all items of Personal Property declared surplus.

5.3 Disposal Process

The (Manager, Administrative Services) designee will prepare a list of all Personal Property to be disposed of and prepare an internal estimate of the value of such property.

A. The method of disposal shall be based on the following Personal Property values:

1. Personal Property valued at less than \$1,000 may be sold or donated, or when having an estimated resale value less than the cost of handling and sale may be disposed of as scrap or junk;
2. Solicitation via telephone, email, and/or direct mailings may be used where the estimated Fair Market Value of the Property to be disposed of does not exceed \$15,000. All bids must be submitted in writing on the Corporation generated forms or an appropriate substitute and in the manner prescribed by this Policy and by the date and time (the "Bid Due Date") included in the solicitation.

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3. Personal Property valued in excess of \$5,000 up to and including \$15,000 may be negotiated or made by public auction without publicly advertising for bids when approved by the Contracting Officer or, where required, by the Board, such as in Section 5.1 (paragraphs E and F);
4. Personal Property valued in excess of \$15,000 shall be offered for sale by a formal competitive process that includes public advertising for bids unless one of the exceptions listed in Section 5.1 E is met. If such an exception exists, disposal may be by negotiation or public auction without public advertising, when approved by the Contracting Officer or, where required, by the Board, such as in Section 5.1.G.

Note: For Personal Property valued in excess of \$15,000 disposed of by negotiation, an explanatory statement is required as described in Section 5.1.I.

- B. When public advertising is required for disposals, the following steps must be taken pursuant to Public Authorities Law §2897:
1. The advertisement 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 Personal Property;
 2. All bids shall be publicly disclosed at the time and place stated in the advertisement; and
 3. The award shall be made with reasonable promptness by notice to the responsible bidder whose bid, in conformance with the solicitation, will be most advantageous to the Corporation, price and other factors considered, provided that any and all bids may be rejected when it is in the public interest to do so.
- C. When property is sold by sealed bid, by public auction or by an electronic auction, sale prices are approved by the (Manager, Administrative Services) or designee. If the (Manager, Administrative Services) or designee determines that property should be offered at an established or set price due to its unusual nature, or any other special conditions that would make competitive bidding impractical, (Manager, Administrative Services) or designee will recommend an acceptable price and a method of sale to the Contracting Officer for approval.
- D. If the (Manager, Administrative Services) or designee determines that the best interests of the Corporation are served by selling at public auction, the Manager, Administrative Services) or designee shall supervise the auction and may reject any and all bids considered to be unacceptable.
- E. Where permitted by law, Disposals may be performed by the Commissioner of General Services on behalf of the Corporation when the Corporation has entered into an agreement with the Commissioner of General Services pursuant to Public Authorities Law and/or other applicable statutes.

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5.4 Reports

The Corporation will annually develop and distribute reports regarding Personal Property having a Fair Market Value in excess of \$5,000 that was disposed of during the reporting period, including the full description, price (if any) received and the name of the purchaser for all such Property disposed of by the Corporation during such period as required by law. The report shall be delivered to the comptroller, the director of the budget, the commissioner of general services, the legislature and the authorities budget office.

5.5 Procurement of Surplus Personal Property by Employees

Corporation employees and relatives of such employees or third parties acting on behalf of such employees shall not have any personal interest in, or engage in, any activity, inclusive of bidding for the purchase of Canal Property that would create or appear to create a conflict with the proper discharge of their public duties and are prohibited from subsequently acquiring in any manner. It is important, even in the absence of any impropriety, that no appearance of impropriety is given. Therefore, pursuant to the Public Officers Law, all Corporation employees, their spouses and any children and stepchildren under age 18, stepparents, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, nephew, niece, mother in law, father in law, sister in law, brother in law, daughter in law, son in law are prohibited from procuring Corporation Surplus Personal Property or otherwise securing such property through the use of an agent or other third party.

In addition, Corporation employees, other than the Manager, Administrative Services or designee, shall not disclose to any non-employee any information that they obtain regarding such property due to the nature of their employment. Such disclosure by the Manager, Administrative Services or designee shall only be made in the course of the proper discharge of their official duties.

5.6 Signing Authority

1. The Board, if the Fair Market Value of the Property is greater than \$500,000 or if the Disposal is for less than Fair Market Value in accordance with Section 5. (paragraphs F and G).
2. The Contracting Officer if the Fair Market Value is up to \$500,000.00.
3. The (Deputy Director) if the Fair Market Value is up to \$100,000.00.
4. The (Manager, Administrative Services) if the Fair market Value of the Property is \$5,000 or less.
5. For Fleet related transactions, the Vice President of the Power Authority's Enterprise Shared Services or equivalent(s), if the Fair Market Value of the Property is up to \$500,000.
6. For Fleet related transactions, the Director of the Authority's Fleet Operation, if the Fair Market Value of the Property is up to \$100,000.

Guidelines for the Disposal of Canal Corporation Personal Property

- 5.7** The President and Chief Executive Officer issues and approves all Company Policies and policy revisions.
- 5.8** The Executive Vice President and General Counsel, as delegated by the President and Chief Executive Officer, coordinates and administers the Company Policy Program.
- 5.9** At the request of the Executive Vice President and General Counsel, all Authority Business Units and Department Heads shall support and provide assistance in the coordination and administration of this Policy.

6 VIOLATIONS

Violations of this Policy and related policies and procedures by employees may result in disciplinary action up to and including termination. Violations of this Policy by contractors and other authorized third parties may result in the revocation of such party's access to Corporation premises and/or electronic access to its systems, and the termination of such party's contract for services. In addition, where the conduct engaged in is illegal, violators may be subject to prosecution under applicable federal, state or local laws.

7 REFERENCES

Abandoned Property Law
Canal Law
Canal Personal Property Disposal Policy 25-6-02C
Personal Property Law
Public Authorities Accountability Act
Title 5-A, Article 9 of the Public Authorities Law
Vehicle and Traffic Law

8 POLICY REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

Revision cycle : Every Year

9 ATTACHMENTS

Attachment 9.1: Sales Agreement

Guidelines for the Disposal of Canal Corporation Personal Property

ATTACHMENT 9.1

PERSONAL PROPERTY SALES AGREEMENT

_____, the Buyer, and the New York State Canal Corp ("Canal Corp"), agree as follows:

- 1) The personal property identified herein is sold by the Canal Corp and purchased by Buyer "AS IS, WHERE IS" at the price(s) shown, plus any applicable sales tax.
- 2) **THE CANAL CORP DOES NOT IN ANY WAY WARRANT THE FITNESS OF THE PERSONAL PROPERTY FOR ANY PARTICULAR USE OR ITS MERCHANTABILITY AND DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE QUALITY, CHARACTER, PERFORMANCE, OR CONDITION OF THE PERSONAL PROPERTY OR ANY OF ITS COMPONENT PARTS, ASSEMBLIES, OR ACCESSORIES.**
- 3) The Buyer warrants that he/she/it is not a current or former Canal Corp employee, is not related to a Canal Corp employee and did not bid on behalf of a Canal Corp employee. Buyer is aware that Canal Corp employees and their family members are precluded from subsequently receiving, or acquiring, in whole or in part, by any manner including gift, sale, loan or lease, the personal property acquired by the Buyer pursuant to this sale. The term "related to" as used in this paragraph means the relationships of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, or son-in-law. The Canal Corp reserves the right to invoke any available legal or equitable remedy in the event of a breach by the Buyer of his or her warranty under this paragraph, including but not limited to, rescinding the sale and recovering the property sold and all costs associated with the sale and the rescission of said sale.
- 4) The Buyer shall indemnify and hold harmless the State of New York, New York Power Authority and the Canal Corp and all of its officers, agents and employees from any loss, damage, remedial or response cost, liability or expense, on account of damage or contamination to property and injuries, including death, to all persons, including Buyer's employees, or any third parties, arising or in any manner growing out of the sale of any personal property or the performance of any work under this agreement and shall defend at its own expense any suits or other proceedings brought against the State of New York, New York Power Authority and the Canal Corp and its officers, agents and employees, or any of them, on account thereof, and pay



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all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection therewith.

5) Except for disposals by public auction, the Buyer shall remove the personal property from the Canal Corp premises by _____ at Buyer's expense. The Buyer shall make payment upon delivery by certified check payable to the New York State Canal Corporation.

Description of Personal Property:

Selling Price: _____

Executed this _____ day of _____, 20_____.

Buyer (Print or Type):

Seller:

New York State Canal Corporation
30 South Pearl Street
Albany, New York,

Authorized Signature

Authorized Signature

Full Name (Printed)

Title

Title

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PRIVACY LAW NOTIFICATION

SECTION 94(1)(d) OF THE NEW YORK PUBLIC OFFICERS LAW REQUIRES THIS NOTICE TO BE PROVIDED WHEN COLLECTING PERSONAL INFORMATION FROM POTENTIAL PURCHASERS OF CANAL CORPORATION PROPERTY.

This information is requested pursuant to Article 5, Title I of the Public Authorities Law. The principal purpose for which the information is collected is to assist the New York State Canal Corporation in the sale of Canal Corp personal property in accordance with Section 96(1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e) and (f).

Failure to provide the requested information may result in ineligibility for participation in a program, sale or benefit provided by the Canal Corp.

This information will be maintained by the Procurement Department at the New York State Canal Corp Corporate Office.

**New York State Canal Corporation
Expenditure Authorization Procedures
Approval Limits Applicable to Requisitions for Procurement and**

**Exhibit 2b-C
March 20, 2018**

Title	Low Bidder or Best Value	Non-competitive, Sole or Single Source	Cumulative Change Order Limit (Subject to Rebidding Thresholds, see page 3)
Director of Design / Construction Management / Dam Safety	to \$1,000,000	to \$500,000	to \$250,000
Manager Planning & Environmental Services, Manager Engineering & Maintenance, Policy & Program Development Director Special Projects, Manager Administrative Services, Division Canal Engineer Civil Engineer 5	to \$2,000,000	to \$750,000	to \$500,000
Deputy Director Engineering, Construction & Maintenance, Executive Deputy	to \$3,000,000	to \$750,000	to \$500,000
Canal Corporation Chief Operating Officer	to \$6,000,000	to \$6,000,000	to \$6,000,000
Canal Board	over \$6,000,000	over \$6,000,000	over \$6,000,000

Non-Procurement Contracts Excluding Personal Services Contracts

Approval Limits for Personal Service Contracts

Title	Low Bidder or Best Value	Non-competitive, Sole or Single Source	Cumulative Change Order Limit (Subject to Rebidding Thresholds, see page 3)
Director of Design / Construction Management / Dam Safety	to \$100,000	to \$50,000	to \$50,000
Manager Planning & Environmental Services, Manager Engineering & Maintenance, Policy & Program Development Director Special Projects, Manager Administrative Services, Division Canal Engineer Civil Engineer 5	to \$200,000	to \$100,000	to \$50,000
Deputy Director Engineering, Construction & Maintenance, Executive Deputy	to \$500,000	to \$250,000	to \$125,000
Canal Corporation Chief Operating Officer	to \$2,000,000	to \$1,000,000	to \$500,000
Canal Board	over \$2,000,000	over \$1,000,000	over \$500,000

Notes:

1. "Low Bidder or Best Value" approval limits also apply to Individual Purchase Order Releases (PORs) from active Value Contracts, up to the Chief Operating Officer level. The Chief Operating Officer can approve PORs up to the full authorization amount of a Value Contract.
2. Single and Sole Source Contracts valued or estimated at \$1 million or greater require review for approval by the NYS Comptroller. Change orders (competitively bid or non-

competitively bid) valued or estimated at \$1 million or greater requires NYS Comptroller notification.

3. Canal Corporation Board approval is also required when:

- A. The term of a Personal Services, Non-Personal Services or Construction contract including any extensions or options, exceeds 1 year.
- B. The initial term of less than 1 year for a Personal Services, Non-Personal Services or Construction contract extends beyond 1 year.
- C. Cumulative Change Orders exceed \$500,000 for Personal Services contracts or \$6 million for all other procurement and non-procurement contracts.

**New York State Canal Corporation
Expenditure Authorization Procedures
Limits for the Execution of Contract Documents**

Procurement Team Specialist (Below Grade 18)	to \$5,000
Senior Procurement Team Specialist (Grade 18)	to \$50,000
Procurement Team Manager (Grade 23 thru 25)	to \$250,000
Manager Administrative Services	to \$500,000
Executive Deputy	to \$750,000
NYPA VP - Enterprise Shared Services (Real Estate and Fleet Disposal Transactions only)	to \$3,000,000
Canal Corporation Chief Operating Officer	to \$10,000,000
NYPA VP – Strategic Supply Management (Procurement)	to \$20,000,000
NYPA President, Chairman or Chief Operating Officer	over \$20,000,000

(Includes all Purchase Orders, Contracts and Change Orders)

Notes:

1. All delegations of authority must be in writing.

CHANGE ORDER APPROVALS AND REBIDDING THRESHOLDS

1. A) For contracts with initially approved amounts of **\$100,000 or less**, rebidding will occur when the total cumulative value of change orders exceeds \$25,000.

B) **If rebidding is not feasible**, any request to increase funding for such contracts must be supported by a detailed memorandum explaining the need for additional funding in excess of the \$25,000 threshold. The memorandum shall be approved by the Executive Deputy level or above and forwarded to the NYPA VP, Strategic Supply Management (SSM) for review and final approval.
2. A) For contracts with initially approved amounts **exceeding \$100,000**, rebidding will occur when the total cumulative value of change orders exceeds 25% of the original amount approved.

B) **If rebidding is not feasible**, any request to increase funding for such contracts must be supported by a detailed memorandum explaining the need for additional funding in excess of 25% of the original amount approved. The memorandum shall be signed by the Executive Deputy level or above and forwarded to the NYPA VP, SSM for review, followed by transmittal to the NYPA President, Chairman or Chief Operating Officer for approval, prior to obtaining the Canal Board's approval.
3. Rebidding should commence as soon as it is recognized that the contract value will exceed these thresholds, even if the term of the contract is not complete.
4. Once the approval of such additional funding is received, any subsequent increase in funding requires an additional memorandum for the NYPA President's, Chairman's or Chief Operating Officer's approval, until either the Canal Board's approval is obtained or the Contract is rebid.
5. Typical bases for additional funding in excess of the 25% threshold include an "emergency condition" (as defined in Canal Corporation Guidelines for Procurement Contracts) which necessitates the additional funding; a situation where it is impractical to rebid (e.g., a construction project where it would not be reasonable to change contractors) or other reasons as provided for in the Procurement Guidelines. Under-estimating the scope of a Contract or failure to rebid in a timely fashion are not acceptable reasons for increasing its value by more than 25%.

New York State Canal Corporation
Expenditure Authorization Procedures

Exhibit 2b-C-1
March 20, 2018

Approval Limits – Requisitions for Commitments:

Non-Personal Services, Personal Services, Construction, Equipment Purchases and Non-Procurement Contracts

Title	If Awarded to: Low Bidder	If Awarded to: Non-Low bidder, Sole or Single Source	Cumulative Change Order Limit (Subject to Rebidding Thresholds, see page 3)
Manager Planning & Environmental Services, Manager Engineering & Maintenance, Policy & Program Development Director Special Projects, Manager Administrative Services, Division Canal Engineer Civil Engineer 5	to \$250,000	to \$100,000	to \$100,000
Deputy Director Engineering & Maintenance, Executive Deputy	to \$500,000*	to \$250,000	to \$250,000
Canal Board	Over \$500,000	Over \$250,000	Over \$250,000
Canal Board Approval is also required when:			
1. The term of a Non-Personal Services, Personal Services or Construction contract exceeds one year, including any extensions or options.			
2. The initial term of less than one year for Non-Personal Services, Personal Services or Construction contracts extends beyond one year.			
3. Cumulative Change Orders exceed \$250,000.			
*Individual Purchase Order Releases (PORs) to approved Value Contracts are "absolute" amounts, to be authorized per the approval limits for "award to low bidder".			

New York State Canal Corporation
 Expenditure Authorization Procedures
 Approval Limits for Signing
 (Includes all Purchase Orders, Contracts and Change Orders)

Contract Management Specialist 1 (SG 18)	to \$5,000
Contract Management Specialist 2 (SG23), Administrative Officer (SG 23)	to \$100,000
Manager Administrative Services (SG 34)	to \$250,000
Executive Deputy (SG 35)	to \$500,000
NYPA VP – Procurement	to \$10,000,000
NYPA VP - Enterprise Shared Services (Real Estate and Fleet Disposal Transactions only)	to \$10,000,000
NYPA SVP - Public & Regulatory Affairs	to \$10,000,000
NYPA President, Chairman or Chief Operating Officer	over \$10,000,000

Notes:

1. All delegations of authority must be in writing.

2a. For "Value Contracts", the Approval Limits for Signing Purchase Order Releases (POR's) are absolute amounts.

2b. For Change Orders to Purchase Orders or Contracts, the Approval Limit for Signature is based on Cumulative Change Order total.

*Source Data for proposed NYS Canal Corporation Expenditure Authorization

- NYPA EAP 1.0 Rev 10
- NY State Canal Corporation P.O. and Contract Approval level Matrix
- Canal Organization design dated 11/21/16

CHANGE ORDER APPROVALS AND REBIDDING THRESHOLDS

1. A) For Contracts with initially approved amounts of **\$100,000 or less**, rebidding will occur when the total cumulative value of Change Orders exceeds \$25,000.

B) **If rebidding is not feasible**, any request to increase funding for such Contracts must be supported by a detailed memorandum explaining the need for additional funding in excess of the \$25,000 threshold. The memorandum shall be approved by the Executive Deputy and forwarded to the NYPA VP - Procurement for review and final approval.
2. A) For Contracts with initially approved amounts **exceeding \$100,000**, rebidding will occur when the total cumulative value of Change Orders exceeds \$250,000.

B) **If rebidding is not feasible**, any request to increase funding for such Contracts must be supported by a detailed memorandum explaining the need for additional funding in excess of \$250,000. The memorandum shall be signed by the Executive Deputy and forwarded to the NYPA VP – Procurement for review, followed by transmittal to the NYPA President, Chairman or Chief Operating Officer for approval, prior to obtaining the Canal Board’s approval.
3. Rebidding should commence as soon as it is recognized that the Contract value will exceed these thresholds, even if the term of the Contract is not complete.
4. Once the approval of such additional funding is received, any subsequent increase in funding requires an additional memorandum for the NYPA President's, Chairman’s or Chief Operating Officer’s approval, until either the Canal Board’s approval is obtained or the Contract is rebid.
5. Typical bases for additional funding in excess of \$250,000 include an "emergency condition" (as defined in the Authority’s Guidelines for Procurement Contracts) which necessitates the additional funding; a situation where it is impractical to rebid (e.g., a construction project where it would not be reasonable to change contractors) or other reasons as provided for in the Procurement Guidelines.
6. Underestimating the scope of a Contract or failure to rebid in a timely fashion are not acceptable reasons for extending a Contract or increasing its value by more than \$250,000.

The term “Contracts” as used in above policy refers to any and all Commitments for the purchase of goods or services made by NYS Canal Corporation.

ACQUISITION AND DISPOSAL OF REAL PROPERTY
January 1– December 31, 2017

Section 2896 of the Public Authorities Law (PAL) requires a report setting out all real property transactions of the Corporation over a given reporting period. Such report shall consist of a list and full description of all real property disposed of during such period. The report shall contain the price received by the Corporation and the name of the purchaser. There is no monetary threshold, so all disposals regardless of value need to be reported. In addition, acquisitions and leasing transactions are also included in this report. All acquisitions and dispositions reported herein were approved by the Board of Directors/or are consistent with the Corporation's Guidelines for the Disposal of Canal Corporation Real Property and the Guidelines for the Acquisition of Canal Corporation Real Property as adopted by the Board on September 26, 2017.

I. ACQUISITIONS

1.) Acquisitions by Deed or Easement:

Jean P. Pitt Revocable Trust - Acquisition of 0.46 acres in the Town of Fabius, County of Onondaga (Map No. D214181, Parcel No. 6393) in support of the DeRuyter Dam Rehabilitation Project. The consideration for this transaction was \$1,860.00. The warranty deed was recorded on January 19, 2018.

Jeremiah Dennis and Nancy Yeates-Dennis – Acquisition of 1.14 acres in the Town of Fabius, County of Onondaga (Map No. D214181, Parcel No. 6394) in support of the DeRuyter Dam Rehabilitation Project. The consideration for this transaction was \$4,800.00. The warranty deed was recorded on January 19, 2018.

Jason J. Tong- Acquisition of 1.84 acres in the Town of Fabius, County of Onondaga (Map No. D214181, Parcel No. 6395) in support of the DeRuyter Dam Rehabilitation Project. The consideration for this transaction was \$10,000.00. The warranty deed was recorded on January 19, 2018.

II. DISPOSITIONS

1.) Dispositions by Deed or Easement:

Daniel and Judy Shaw – Conveyed via quit claim deed 1.38 acres of canal land located in the Town of Fort Edward, Washington County (Abandonment Map No. 964). This conveyance was approved by the Contracting Officer on March 24, 2016 under a delegation authorized by the Board of Directors pursuant to Resolution No. 561 adopted at Meeting No. 176 held on December 12, 2011. The property for was sold for \$10,000 to cure an encroachment of a dilapidated camp and out-building located thereon. The deed was recorded on June 25, 2017.



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**Guidelines and Procedures for the Disposal
of Canal Corporation Real Property**

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Guidelines and Procedures for the Disposal of Canal Corporation Real Property

Note: Revision # should be listed in descending order starting with most recent version at the top

Revision Date(For BCG Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
[Revision Date]	1	Conversion to new Canal document template	All	Allison Renstrom Shea Special Counsel



Document Title:
Guidelines and Procedures for the Disposal
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1 PURPOSE AND SCOPE

The purpose of these Guidelines for the Disposal of Real Property (“Guidelines”), which comply with Title 5-A, Article 9 of the Public Authorities Law, is to establish the procedures that detail the Canal Corporation’s (“Corporation”) policy and instructions regarding the disposal of real property. In addition, the Guidelines designate a Contracting Officer who is responsible for the Corporation’s compliance with, and enforcement of, the Guidelines.

The powers and duties relating to the New York State canal system, which were transferred to and merged with the Power Authority (“Power Authority”) pursuant to Canal Law Section 5, may be exercised by the Power Authority directly or through the Corporation on behalf of the people of the State of New York.

2 APPLICABILITY

This Policy applies to all New York State Canal Corporation employees who intend to Dispose of Real Property owned by or under the jurisdiction of the New York State Canal Corporation.

3 INITIALISMS (ACRONYMS) AND DEFINITIONS

Contracting Officer - shall mean the officer or employee appointed by resolution of the Corporation’s Trustees to be responsible for compliance with, and enforcement of, the Guidelines for the Disposal of Real Property. The “Contracting Officer” is hereby designated to be the Power Authority Vice President – Enterprise Shared Services, or equivalent(s) or designee.

Corporation – Canal Corporation

Dispose or Disposal - shall mean transfer of title or any other beneficial interest in real property in accordance with these Guidelines. Disposal does not include a release of an easement, Permit or Transfer of Jurisdiction.

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 and under similar circumstances.

OGS – NYS Office of General Services

PAL – Public Authorities Law

Permits - shall mean permits issued by the Corporation that grant revocable privileges to use or access real property or structures under the jurisdiction of the Corporation and for the diversion of Canal waters for sanitary, farm or industrial purposes. Permits are revocable in part to assure availability of the real property for Corporation or public purposes. Permits do not transfer a beneficial interest in real property and may be issued when deemed to be advantageous to the Corporation for the purpose of cutting, gathering and hauling away ice from the canals or when the permitted use does not result in a detriment to canal navigation or damage to the banks or other structures thereof. Permits include Occupancy and Work Permits.

- a) **Occupancy Permit** - a revocable instrument that authorizes the temporary, restricted use of real property under the jurisdiction of the Corporation, including, temporary use of Canal lands or structures, and for the diversion of Canal waters for sanitary, farm or industrial purposes.
- b) **Work Permit** - a revocable instrument that authorizes construction, maintenance, inspection, survey, or other type of work or short term activity on real property under the jurisdiction of the Corporation.

Real Property - shall mean real property, including land, tenements and hereditaments owned by the Corporation, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

Relative - shall mean any person living in the same household as the Corporation employee or any person who is a direct descendant of the Corporation employee's grandparents or the spouse of such descendant.

Transfers of Jurisdiction - shall mean transactions pursuant to Public Lands Law §3(4) and which are between the Corporation and other State governmental entities where jurisdiction over Real Property is transferred and reassigned on such terms and conditions as the Corporation and the New York State Office of General Services deem proper, but the title to the Real Property remains in the name of the People of the State of New York.

4 RESPONSIBILITY

The Board shall adopt by resolution Guidelines for the Disposal of Canal Corporation Real Property regarding the use, awarding, monitoring and reporting of contracts for the disposal of Real Property and which designate a Contracting Officer who is responsible for compliance with and enforcement of, these Guidelines.

5 PROCEDURE IMPLEMENTATION

5.1 COMPLIANCE OVERVIEW

The Public Authorities Law ("PAL") requires the Corporation to establish policy guidelines to accomplish the following:

- 5.1.1 Ensure that the Corporation's contracting activities comply with Title 5-A, Article 9 of the Public Authorities Law, the Corporation's enabling statute, and any other applicable law pertaining to the Disposal of Real Property.
- 5.1.2 Maintain inventory controls and accountability systems for all Real Property under the Corporation's control.
- 5.1.3 Periodically inventory Corporation Real Property to determine which Real Property shall be disposed of.
- 5.1.4 Dispose of Corporation Real Property interests as promptly as possible in accordance with the PAL.
- 5.1.5 Prepare annual reports of Real Property Disposal transactions.

5.2 DISPOSITION OF CORPORATION REAL PROPERTY

- 5.2.1 The Corporation may Dispose of Real Property for not less than the Fair Market Value of such Real Property by sale, exchange, or transfer, for cash, credit or other property, without warranty, and upon such other terms and conditions as the Contracting Officer deems proper under the provisions of the PAL and as implemented by these Guidelines. Fair Market Value of the Corporation Real Property subject to Disposal shall be established by independent appraisal as appropriate and consistent with the intent of the PAL. Such appraisal documents shall be included in the record of the Real Property Disposal transaction.
- 5.2.2 Except as set forth in Sections 5.2.3 and 5.2.4 herein of the Guidelines, any Disposal of Real Property shall only be made after publicly advertising for bids in accordance with the following:
 - a) 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 Real Property; and

- b) all bids shall be publicly disclosed at the time and place stated in the advertisement; and
- c) 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 Corporation, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

5.2.3 The Disposal of Corporation Real Property by Negotiation or Public Auction

- a) The Disposal of Corporation Real Property may be negotiated or made by public auction without regard to Section 5.2.2 but subject to obtaining such competition as is feasible under the circumstances, if:
 - 1. the Fair Market Value of the Real Property does not exceed fifteen thousand dollars (\$15,000.00); or
 - 2. bid prices after advertising therefore are not reasonable, either as to all or some part of the Real Property, or have not been independently arrived at in open competition; or
 - 3. the Disposal will be to the state or any political subdivision, and the estimated Fair Market Value of the Real Property and other satisfactory terms of Disposal are obtained by negotiation; or
 - 4. under those circumstances permitted by Section 5.2.4; or
 - 5. such action is otherwise authorized by law.
- b) The Disposal of Corporation Real Property may also be made by negotiated sale without regard to Section 5.2.2 but subject to obtaining such competition as is feasible under the circumstances, if ALL of the following conditions have been satisfied:
 - 1. the Corporation has determined that: such real property is no longer necessary or useful to the purposes of the Corporation; disposal of such real property complies with all applicable provisions of the canal law; and disposal of such real property is in the best interest of the Corporation; and
 - 2. an appraisal of the fair market value of such property has been made by an independent appraiser and included in the record of the transaction; and
 - 3. the fair market value of such real property is greater than fifteen thousand dollars (\$15,000.00) but not greater than seventy-five thousand dollars (\$75,000.00); and

Guidelines and Procedures for the Disposal of Canal Corporation Real Property

4. such real property was improved prior to April 1, 1992 under a municipal permit or a permit issued pursuant to Section 100 of the Canal Law, thereby creating an encroachment on Corporation Real Property; and
5. the purchaser of such Real Property is, or will be, the owner of the improvement that either fully or partially encroaches on Corporation real property; and
6. the consideration paid for such real property will not be less than the fair market value of the real property exclusive of the value, fair market or otherwise, of the encroaching improvements.

5.2.4 Below Fair Market Value

- a) No Real Property owned, leased or otherwise in the control of the Corporation may be sold, leased, or otherwise alienated for less than its Fair Market Value except if:
 1. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Real Property will remain with the government or any other public entity; or
 2. the purpose of the transfer is within the purpose, mission or governing statute of the Corporation; or
 3. in the event the Corporation seeks to transfer Real Property for less than its Fair Market Value to other than a governmental entity, which Disposal would not be consistent with the Corporation's mission, purpose or governing statutes, the Corporation shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate, or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Corporation may effectuate such transfer.
- b) In the event a below Fair Market Value Real Property transfer is proposed, the following information must be provided to the Corporation's Board of Trustees and the public:
 1. a full description of the Real Property; and
 2. an appraisal of the Fair Market Value of the Real Property and any other information establishing the Fair Market Value sought by the Corporation's Board of Trustees; and

Guidelines and Procedures for the Disposal of Canal Corporation Real Property

3. 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, if any, to the communities in which the Real Property is situated as are required by the transfer; and
 4. a statement of the value to be received compared to the Fair Market Value; and
 5. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
 6. the names of other private parties who have made an offer for such Real Property, the value offered, and the purpose for which the Real Property was sought to be used.
- d) Before approving the Disposal of any Real Property for less than Fair Market Value, the Corporation's Board of Trustees shall consider the information described in Paragraph 5.2.4.b 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.
- 5.2.5 An explanatory statement detailing the Disposal by negotiation of Corporation Real Property subject to the PAL as set forth in Section 5.2.3.a shall be made for any Disposal of:
- a) Real Property with a Fair Market Value in excess of one hundred thousand dollars (\$100,000.00) except that Real Property Disposed of by lease or exchange shall only be subject to Paragraph 5.2.5.b of this Section 5.2.5; or
 - b) Real Property Disposed of by lease if the fair annual rent over the term of the lease is in excess of fifteen thousand dollars (\$15,000.00); or
 - c) Any Real Property or real and related personal property Disposed of by exchange, regardless of value, or any property any part of the consideration is for Real Property.
- 5.2.6 Each explanatory statement prepared in accordance with Section 5.2.5 above shall be transmitted to the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office not less than 90 days in advance of such Disposal, and a copy shall be kept by the Corporation.

- 5.2.7 In the Corporation's discretion, when it shall be deemed advantageous to the Corporation and the State, the Corporation may enter into an agreement with the Office of the Commissioner of the Office of General Services ("OGS") under which OGS may Dispose of the Corporation's Real Property under terms and conditions agreed to by the Corporation and the OGS. In Disposing of any such Real Property of the Corporation, the OGS shall be bound by the relevant provisions of the PAL.
- 5.2.8 No Corporation employee who is involved in the award of Corporation grants or contracts, may ask any purchaser(s), grantor(s), lessor(s) or officer(s), director(s) or employee(s) of such current or prospective purchaser(s), contractor(s) or grantee(s) to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.2.9 No Corporation employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 5.2.8 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- 5.2.10 No Corporation employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% 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. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
- 5.2.11 Public Authority Contracts
- a) Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain Public Authority contracts.
 - b) Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure ("Eligible Contract"), must be reported in advance of execution to the OSC. Upon execution, all such Eligible Contracts must be filed with the OSC within 60 days.
 - c) If the OSC has previously identified a contract or category of contract as "reviewable" ("Reviewable Contract"), such contract must include language stating that it is subject to OSC approval and the executed Reviewable Contract must be submitted

to the OSC for review. If the OSC does not act to disapprove the Reviewable Contract within 90 days, the contract is valid.

5.3 CORPORATION REAL PROPERTY REPORTS

- 5.3.1 The Corporation shall publish the following reports in accordance with these Guidelines:
- a) Pursuant to Section 2800 of the Public Authorities Law, the Corporation shall furnish a report for incorporation in the Corporation's annual report which is distributed to 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 State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Corporation Disposed of during such reporting period and the name of the purchaser of the Real Property and the price paid by the purchaser for the Real Property, and (b) a description of the total amounts of Real Property sold without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property sold is less than Fair Market Value, a detailed explanation of the justification for making the sale without competitive bidding, and a certification by the Power Authority's Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such sale and determined that it complies with applicable law.
 - b) Pursuant to Public Authorities Law § 2896(3), the Corporation shall prepare for distribution to the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office, an annual report listing all real property of the Corporation, which report shall include a list and description of all Real Property Disposed of during the fiscal reporting period. Regarding Disposals, this annual report shall include the price received by the Corporation and the name of the purchaser of the Real Property.
- 5.3.2 The Corporation may be called upon periodically to submit information regarding the Disposal of Real Property to organizations implementing the PAL or other statutes regulating the Disposal of Real Property.
- 5.3.3 The Canal Corporation's Governance Committee meets at least three times per year and Corporation staff may be required to prepare and present ongoing reports regarding the Disposal of Real Property.



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5.4 APPROVAL OF GUIDELINES BY THE AUTHORITY'S BOARD

The Guidelines shall be annually reviewed and approved by the Corporation's Board of Trustees. On or before the thirty-first day of March in each year, the Corporation shall file with the State Comptroller a copy of the most recently reviewed and approved Guidelines, including the name of the Corporation's designated Contracting Officer. At the time of filing such Guidelines with the State Comptroller, the Corporation shall also post such Guidelines on its internet website.

6 VIOLATIONS

Violations of these Guidelines and related policies and procedures by employees may result in disciplinary action up to and including termination. In addition, where the conduct engaged in is illegal, violators may be subject to prosecution under applicable federal, state or local laws.

7 REFERENCES

Canal Law
Public Authorities Law

8 PROCEDURE REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

Revision cycle: Every Year

9 ATTACHMENTS

N/A

Guidelines and Procedures for the Disposal of Canal Corporation Real Property

REDLINE CHANGES

Budget Office not less than 90 days in advance of such Disposal, and a copy shall be kept by the Corporation.

- 5.2.7 In the Corporation's discretion, when it shall be deemed advantageous to the Corporation and the State, the Corporation may enter into an agreement with the Office of the Commissioner of the Office of General Services ("OGS") under which OGS may Dispose of the Corporation's Real Property under terms and conditions agreed to by the Corporation and the OGS. In Disposing of any such Real Property of the Corporation, the OGS shall be bound by the relevant provisions of the PAL.
- 5.2.8 No Corporation employee who is involved in the award of Corporation grants or contracts, may ask any purchaser(s), grantor(s), lessor(s) or officer(s), director(s) or employee(s) of such current or prospective purchaser(s), contractor(s) or grantee(s) to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.2.9 No Corporation employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 5.2.8 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- 5.2.10 No Corporation employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% 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. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
- 5.2.11 Public Authority Contracts
- a) Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain Public Authority contracts.
 - b) Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure ("eEligible eContract"), must be reported in advance of execution to the OSC. Upon execution, all such eEligible eContracts must be filed with the OSC within 60 days.

- c) If the OSC has previously identified a contract or category of contract as “reviewable” (“Reviewable eContract”), such contract must include language stating that it is subject to OSC approval and the executed Reviewable eContract **must be** submitted to the OSC for review. If the OSC does not act to disapprove the Reviewable eContract within 90 days, the contract is valid.

5.3 CORPORATION REAL PROPERTY REPORTS

- 5.3.1 The Corporation shall publish the following reports in accordance with these Guidelines:
 - a) Pursuant to Section 2800 of the Public Authorities Law, the Corporation shall furnish a report for incorporation in the Corporation’s annual report which is distributed to 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 State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Corporation Disposed of during such reporting period and the name of the purchaser of the Real Property and the price paid by the purchaser for the Real Property, and (b) a description of the total amounts of Real Property sold without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property sold is less than Fair Market Value, a detailed explanation of the justification for making the sale without competitive bidding, and a certification by the Power Authority’s Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such sale and determined that it complies with applicable law.
 - b) Pursuant to Public Authorities Law § 2896(3), the Corporation shall prepare for distribution to the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office, an annual report listing all real property of the Corporation, which report shall include a list and description of all Real Property Disposed of during the fiscal reporting period. Regarding Disposals, this annual report shall include the price received by the Corporation and the name of the purchaser of the Real Property.
- 5.3.2 The Corporation may be called upon periodically to submit information regarding the Disposal of Real Property to organizations implementing the PAL or other statutes regulating the Disposal of Real Property.



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**Guidelines and Procedures for the Acquisition of Real Property by the Canal
Corporation**

Note: Revision # should be listed in descending order starting with most recent version at the top

Revision Date(For BCG Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
6/6/2017	1	Conversion to new Canal document template	All	Allison Renstrom Shea Special Counsel



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Guidelines and Procedures for the Acquisition of Real Property by the Canal Corporation

1 PURPOSE AND SCOPE

These Guidelines for the Acquisition of Real Property (“Guidelines”), which comply with Title 2, Article 9 of the Public Authorities Law, establish the procedures that detail the Canal Corporation’s (“Corporation”) policy and instructions regarding the acquisition of real property. In addition, the Guidelines designate a contracting officer who is responsible for the Corporation’s compliance with, and enforcement of, the Guidelines.

The powers and duties relating to the New York State canal system, which were transferred to and merged with the Power Authority of the State of New York (“Power Authority”) pursuant to Section 5 of the Canal Law, may be exercised by the Power Authority directly or through the Corporation on behalf of the people of the State of New York.

2 APPLICABILITY

These Guidelines apply to all New York State Canal Corporation employees who intend to Acquire Real Property for the New York State Canal Corporation.

3 INITIALISMS (ACRONYMS) AND DEFINITIONS

Contracting Officer - shall mean the officer or employee appointed by resolution of the Corporation’s Trustees to be responsible for compliance with, and enforcement of, the Guidelines for the acquisition of real property. The “Contracting Officer” is hereby designated to be the Power Authority Vice President - Enterprise Shared Services, or the equivalent(s), or designee.

Corporation – Canal Corporation

Acquisition or Acquire – shall mean to obtain title to or any other beneficial interest in real property in accordance with applicable statutes and these Guidelines.

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 and under similar circumstances.

OSC – Office of the State Comptroller

PAL – Public Authorities Law

PARIS – Public Authorities Reporting System



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Corporation**

Real Property – shall mean real property, including land, tenements and hereditaments owned by the Corporation, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

Relative – is any person living in the same household as the Corporation employee or any person who is a direct descendant of the Corporation employee’s grandparents or the spouse of such descendant, as referred to in Article 5 of these Guidelines.

4 RESPONSIBILITY

The Board shall adopt by resolution Guidelines for the Acquisition of Canal Corporation Real Property and which designate a Contracting Officer who is responsible for compliance with and enforcement of, these Guidelines.

5 PROCEDURE IMPLEMENTATION

5.1 COMPLIANCE OVERVIEW

- 5.1.1 These Guidelines are being adopted consistent with the Public Authorities Law (“PAL”).
- 5.1.2 The Corporation may Acquire Real Property through purchase, eminent domain, state transfers of jurisdiction, lease and by other legal means.
- 5.1.3 The Corporation’s New York statutory authority for land acquisition includes, without limitation, the Canal Law, the Public Authorities Law, the Real Property Law, the Public Lands Law, the Eminent Domain Procedure Law and the Highway Law, as amended.

5.2 DUTIES OF THE CORPORATION

- 5.2.1 The Corporation will maintain adequate inventory controls and accountability systems for all Real Property under the Corporation’s control.
- 5.2.2 Real Property to be Acquired by the Corporation will be in support of existing facilities, operations or in support of new initiatives being pursued by the Corporation.

Guidelines and Procedures for the Acquisition of Real Property by the Canal Corporation

- 5.2.3 The compensation for and the procedure for such Acquisition must be consistent with these Guidelines and the Corporation's Real Estate Expenditure Authorization Procedures as amended.
- 5.2.4 The Corporation will arrange for the transfer or Acquisition of any Real Property identified for Acquisition in accordance with these Guidelines and the Corporation's Real Estate Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.
- 5.2.5 Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain contracts.
- a) Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure ("Eligible Contract"), must be reported in advance of execution to the OSC. Upon execution, all such Eligible Contracts must be filed with the OSC within 60 days.
 - b) If the OSC has previously identified a contract or category of contract as "reviewable" ("Reviewable Contract"), such Reviewable Contract must include language stating that it is subject to OSC approval and the executed Reviewable Contract must be submitted to the OSC for review. If the OSC does not act to disapprove the Reviewable Contract within 90 days, the contract is valid.

5.3 ETHICAL CONSIDERATIONS

- 5.3.1 No Corporation employee who is involved in the Acquisition of Real Property, may ask any purchaser, grantor, lessor or officers, directors or employees of such current or prospective purchaser, grantor or lessor to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.3.2 No Corporation employee may take part in any Acquisition decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% 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. If such situation arises, the

Guidelines and Procedures for the Acquisition of Real Property by the Canal Corporation

employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

5.4 ACQUISITION REPORTS BY THE CORPORATION

5.4.1 The Corporation shall publish the following reports in accordance with these Guidelines:

- a) Pursuant to Section 2800 of the Public Authorities Law, the Corporation shall furnish a report for incorporation in the Corporation's annual report which is distributed to 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 State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Corporation Acquired during such reporting period and the name of the seller of the Real Property and the price paid by the Corporation for the Real Property, and (b) a description of the total amounts of Real Property purchased without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property purchased exceeds Fair Market Value, a detailed explanation of the justification for making the purchase without competitive bidding, and a certification by the Power Authority's Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such purchase and determined that it complies with applicable law.
- b) The Corporation may be called upon periodically to submit information regarding the Acquisition of Real Property to organizations implementing the PAL or other statutes regulating the Acquisition of Real Property, such as the Authority Budget Office through the Public Authorities Reporting System ("PARIS").
- c) The Corporation's Governance Committee meets at least three times per year and Corporation staff may be required to prepare and present ongoing reports regarding the Acquisition of Real Property.

6 VIOLATIONS

Violations of these Guidelines and related policies and procedures by employees may result in disciplinary action up to and including termination. In addition, where the conduct engaged in is illegal, violators may be subject to prosecution under applicable federal, state or local laws.

7 REFERENCES

Public Authorities Law



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8 PROCEDURE REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

Revision cycle: Every Year

9 ATTACHMENTS

N/A

Guidelines and Procedures for the Acquisition of Canal Corporation Real Property

REDLINE CHANGES

- 5.2.3 The compensation for and the procedure for such Acquisition must be consistent with these Guidelines and the Corporation's Real Estate Expenditure Authorization Procedures as amended.
- 5.2.4 The Corporation will arrange for the transfer or Acquisition of any Real Property identified for Acquisition in accordance with these Guidelines and the Corporation's Real Estate Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.
- 5.2.5 Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain contracts.
- a) Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure ("eEligible eContract"), must be reported in advance of execution to the OSC. Upon execution, all such eEligible eContracts must be filed with the OSC within 60 days.
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- 5.3.2 No Corporation employee may take part in any Acquisition decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% 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. If such situation arises, the

Summary Results of 2017 Confidential Evaluation of NYPA/Canal Board Performance

Criteria	Agree	Somewhat Agree	Somewhat Disagree	Disagree
1. Board members have a shared understanding of the mission and purpose of:				
a. the Authority.	7			
b. Canal Corporation.	6	1		
2. The policies, practices and decisions of the Board are always consistent with the mission and purpose of:				
a. the Authority.	6	1		
b. Canal Corporation.	6	1		
3. Board members comprehend their role and fiduciary responsibilities and hold themselves and each other to these principles.	7			
4. The Board adopts and reviews annually policies, by-laws, and practices for the effective governance, management and operations of:				
a. the Authority.	7			
b. Canal Corporation.	7			
5. The Board sets clear and measurable performance goals that contribute to accomplishing its mission for the Authority:				
a. the Authority.	6	1		
b. Canal Corporation.	4	3		
6. The decisions made by Board members are arrived at through independent judgment and deliberation, free of political influence, pressure or self-interest.	5	2		
7. Individual Board members communicate effectively with executive staff so as to be well informed on the status of all important issues.	7			
8. Board members are knowledgeable about the programs, financial statements, reporting requirements, and other transactions of:				
a. the Authority.	3	4		
b. Canal Corporation.	2	5		
9. The Board meets to review and approve, where required by law, all documents and reports prior to public release and is confident that the information being presented is accurate and complete on behalf of:				
a. the Authority.	6	1		
b. Canal Corporation.	6	1		
10. The Board knows the statutory obligations and compliance status with laws applicable to:				
a. the Authority.	6	1		
b. Canal Corporation.	6	1		
11. Board and committee meetings facilitate open, deliberate and thorough discussion, and the active participation of members.	7			
12. Board members have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken.	5	2		
13. Individual Board members feel empowered to delay votes, defer agenda items, or table actions if they feel additional information or discussion is required.	6	1		
14. The Board exercises appropriate oversight of the CEO and other executive staff, including setting performance expectations and reviewing performance annually.	6	1		
15. The Board has identified the areas of most risk and works to implement risk mitigation strategies before problems occur with management of:				
a. the Authority.	7			
b. Canal Corporation	5	2		
16. Board members demonstrate leadership and vision and work respectfully with each other.	6	1		

Date Completed: 3/9/18

CANALS PROCUREMENT CONTRACTS SUMMARY **January - December 2017**

In accordance with the Procurement Guidelines, “procurement contracts” are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Canal Corporation facilities including operations and maintenance and capital projects, including but not limited to, goods and commodities, construction, maintenance work and other services.

The following summary of all procurement contracts includes specific details for procurements with a value of \$5,000 or greater that were open, completed or awarded in 2017, including contracts that were extended into 2018 or beyond. There were 394 such Canal Corporation contracts with an estimated value of more than \$218 million, with total procurement expenditures in 2017 exceeding \$28 million.

The following is a breakdown of the total value of active contracts:

- 61% Construction Services;
- 6% Equipment and Commodities;
- 1% Architectural and Engineering Services and Legal Services
- 19% Personal Service contracts such as professional consulting services;
- 13% Non-Personal Service contracts such as maintenance, technicians, and contingent workforce

Of the total value of contracts reported (\$218 million), approximately 99% were competitively bid. In 2017, approximately 1% of contracts were sole/single-source awards. The sole/single-source awards included, but were not limited to, the purchase of spare parts and services from original equipment manufacturers, procurements from proprietary sources, procurements required on an emergency basis and New York State Thruway support agreements of which only one remains open.

The Canal Corporation had no disposals of personal property valued or estimated in the amount of \$5,000 or greater during the year 2017. The Canal Corporation had no fossil fuel or corporate finance activity related specifically to its operations. Additionally, for other matters, such as Supplier Diversity Program and Inventory Statistical reporting and the transfer of interest in personal property from NYPA to Canal Corporation, the values have been included in the attached NYPA reports.

CANAL CORPORATION GUIDELINES FOR PROCUREMENT CONTRACTS

1. PURPOSE

These Guidelines for Procurement Contracts (“Guidelines”) set forth the policy of Canal Corporation regarding the solicitation and awarding of procurement contracts. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Articles 15-A and 17-B of the Executive Law and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these Guidelines.

2. DEFINITIONS

- A. “Procurement Contracts” are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Canal Corporation offices, facilities, operations and maintenance (“O&M”) and capital projects (as defined in Section 2.O. and 2. P., respectively), including but not limited to goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2.C below.
- B. “Non-Procurement Contracts” include contracts valued under \$5,000 and contracts for the direct placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Canal Corporation participates.
- C. “Services Contracts” are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships or firms who are not and do not employ officers or employees of the Canal Corporation) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by consultant for the Canal Corporation) and construction management. Non-Personal Services include, but are not limited to: skilled or unskilled temporary personnel, including clerical office staff, technicians or engineers working under Canal Corporation supervision; maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services.

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Canal Corporation staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of these factors.

- D. Goods” include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as “Equipment” where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies
- E. “Evaluation of Proposals,” as further set forth in Section 4 below, includes as evaluating factors the Canal Corporation consideration of a bidder’s skill, judgment and business integrity.
- F. “Contact” is any oral, written or electronic communication with the Canal Corporation under circumstances where a reasonable person would infer that the communication was intended to influence the Canal Corporation conduct or decision regarding the procurement.
- G. “Relative” is any person living in the same household as the Canal Corporation employee and any person who is a direct descendant of the Canal Corporation employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines.
- H. “Minority- and Women-owned Business Enterprise” (“MWBE”) is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in the Canal Corporation Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A, and pursuant to the definition found in Executive Law § 310.
- I. “Small Business” (or Small Business Enterprise, “SBE”), pursuant to Executive Law § 310 and as used in these Guidelines, unless otherwise indicated, is a business that has a significant business presence (as defined at 5 NYCRR 140.1) in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.
- J. “Single Source” is a procurement in which the Canal Corporation, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offeror over another that can supply the goods or services.

- K. “Sole Source” is a procurement in which only one offeror is capable of supplying the required goods or services.
- L. “Service-Disabled Veteran-Owned Business” (“SDVOB”) is a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is at least 51% owned by one or more service-disabled veterans; in which such ownership is real, substantial and continuing, and also has and exercises the authority to control independently the day-to-day business decisions of the enterprise; is a Small Business and is certified by the New York State Office of General Services, as further set forth in Article 17-B of the Executive Law.
- M. “Discretionary Purchase” is a procurement made below statutorily established monetary threshold amounts (e.g., not exceeding \$200,000 for the purchase of commodities and/or services from Small Businesses or NYS-certified MWBE or SDVOB firms, and as further set forth in Sections 3.D and 3.K.5-7) and at the discretion of the Canal Corporation, without the need for a formal competitive bid process. For the purpose of determining whether a purchase is within the discretionary thresholds, the aggregate amount of all purchases of the same commodities and/or services to be made within the 12-month period commencing on the date of purchase shall be considered. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities and/or services from the same provider within the 12-month period commencing on the date of the first purchase to an amount greater than \$200,000, pursuant to State Finance Law § 163.
- N. “Disadvantaged Business Enterprise” (DBE) is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, pursuant to the definition found in 49 C.F.R Part 26.
- O. “Operation and Maintenance” (“O&M”) generally refers to the work or services necessary to keep the plants, transmission lines, and other equipment and facilities to include NYPA customers, where authorized, (collectively referred to generally as an “asset”) in optimal operating condition and/or to restore an asset to its productive capacity. This includes the cost of inspecting, testing, analyzing and reporting on the condition of the asset required to determine repairs or replacement, as well as costs associated with the normal operation and administration of NYPA’s production/transmission facilities and energy programs.

- P. “Capital projects” generally refers to the acquisition or construction of new assets, the replacement and/or betterment of existing assets, equipment or property (including those of NYPA’s customers, where authorized). Betterment refers to an extension of the useful life or improvement in the efficiency and/or capacity of the asset, equipment or property.

3. SOLICITATION REQUIREMENTS

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Procurement Department (rebranded Strategic Supply Management, hereinafter “SSM”), or the Canal Corporation Procurement Department, and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (“RFP”) or Request for Quotations (“RFQ”) will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$50,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$50,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance. Whenever possible and practicable, notification of the availability of an RFP and RFQ through the Canal Corporation’s website and/or NYPA’s website should be sent to more than five providers.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation advertised in the same manner as an RFP/RFQ (referred to as a Request for Qualifications and/or Request for Information (“RFI”). In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder’s skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. The Canal Corporation may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Canal Corporation does so at its own cost or expense and will not be reimbursed by the Canal Corporation for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Canal Corporation representative.
- D. In order to promote the use of Minority- and Women-owned Business Enterprises (“MWBEs”), Service-Disabled Veteran-Owned Businesses (“SDVOBs”) and Small Business Enterprises (“SBEs”), the Canal Corporation will solicit offers from such firms known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definitions of NYS-certified MWBE or SDVOB firms and SBEs are set forth in Sections 2.H, 2.L and 2.I, respectively.

To foster increased use of MWBEs, SDVOBs and SBEs, a single proposal may be sought, negotiated and accepted for discretionary purchases of goods and/or services

not exceeding \$200,000, in the aggregate including all amendments, from a NYS-certified MWBE or SDVOB firm or an SBE that offers a reasonable price for such goods and/or services. The award of such proposal requires the written approval of the Vice President of Procurement. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the Vice President of Procurement. Furthermore, the award of such procurement contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.

- E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Canal Corporation will endeavor to promote such participation and to comply with the applicable statutory provisions. In furtherance of Public Authorities Law § 2879, the following definitions and actions apply:
1. “New York State Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Canal Corporation that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Canal Corporation that are substantially performed within New York State as further described in Public Authorities Law § 2879.
 2. “New York State resident” is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
 3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Canal Corporation that are substantially produced outside New York State, or services other than construction services, sought by the Canal Corporation that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
 4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State

Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.

5. Pursuant to Public Authorities Law § 2879, the Canal Corporation shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by the NYPA’s President and CEO if the CEO determines in writing that it is in the best interests of the Canal Corporation to do so, as further set forth in the above-referenced law.
 6. Pursuant to Public Authorities Law § 2879, the Canal Corporation will, where feasible, make use of the stock item specification forms of New York State manufacturers, producers and/or assemblers, as made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.
- F. Certain goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State (e.g., the New York State Office of General Services (“OGS”)) or Federal government (e.g., General Services Administration (“GSA”)) or any city or municipality where the White Plains SSM Department, or Canal Corporation Procurement Department, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Canal Corporation and have approved the specifications and proposed terms and conditions of such contract.

Certain Procurement Contracts established by the OGS or GSA require that authorized users conduct a “mini-bid” (i.e., an abbreviated supplemental competitive bid procurement process) among prequalified bidders identified in such established contracts. Certain other Procurement Contracts issued by the Canal Corporation (e.g., for on-call consulting or contracting services) may also utilize a mini-bid process, typically, in cases of a multiple award, where a contract is awarded to more than one bidder that meets the Canal Corporation bid requirements, in order to satisfy multiple factors and needs as set forth in the bid document. Such mini-bids shall be conducted by the Canal’s Corporation Procurement staff (or on behalf of the Canal Corporation by an Implementation Contractor) where applicable and practicable. Within a said multiple award group, work may be assigned to a specific firm without conducting a mini-bid, under certain circumstances, including but not limited to: where such firm possesses specialized expertise and is uniquely qualified to perform such work; where time constraints, emergency or other critical conditions exist or geographic location is of primary consideration in order to meet schedule requirements, respond to emergent issues or otherwise meet the Canal’s Corporation needs; or when the work scope is below a specified monetary threshold. The decision to assign work without conducting a mini-bid shall typically be made jointly by the Canal Corporation

Procurement Department and initiating departments, and shall be documented for the procurement record.

- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; milestone dates; the Canal Corporation Supplier Diversity Program and SDVOB requirements, if applicable; all other applicable Canal Corporation requirements and any special methods or limitations that the Canal Corporation chooses to govern the work. Telephone solicitation, usually for procurements valued at less than \$50,000, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification. All solicitations made by telephone shall be documented and made part of the Procurement Record.
- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), the Canal Corporation will, prior to soliciting proposals, submit the following information to the Commissioner of the DED to be included on the New York State *Contract Reporter* website, (www.nyscr.ny.gov) (unless such posting would serve no useful purpose): (1) the Canal's Corporation name and address; (2) the solicitation number; (3) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (4) the address where bids or proposals are to be submitted; (5) the due date for bids or proposals; (6) a description of any eligibility or qualification requirements or preferences; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture or coproduction arrangement; (8) any other information deemed useful to potential contractors; (9) the name, address, and phone number of the person to be contacted for additional information and (10) a statement as to whether the goods and/or services sought have, in the immediately preceding three-year period, been supplied by a Foreign Business Enterprise. Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the *Contract Reporter* website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, the Canal Corporation will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on the *Contract Reporter* website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.M, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the NYPA Vice President of Strategic Supply Management (SSM), and/or the head of the initiating department that does not complete its procurements through NYPA SSM or the Canal Corporation Procurement Department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Canal Corporation.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the *Contract Reporter* website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such discretionary contracts not exceeding \$200,000 awarded to Small Businesses or NYS-certified SDVOB or MWBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured, or for the purchase of food, including milk and milk products that are grown, produced or harvested in New York State, and certain other Procurement Contracts exempt from the general advertising requirement for procurement contract bidding opportunities, in accordance with the afore-referenced law. Such notice shall specify the name of the awardee.

- I. In order to further increase participation of service-disabled veterans in New York State's contracting opportunities, the Service-Disabled Veteran-Owned Business ("SDVOB") Act was signed into law on May 12, 2014. The SDVOB program provides for eligible Veteran business owners to become certified as a New York State Service-Disabled Veteran-Owned Business. The Division of Service-Disabled Veterans' Business Development within the New York State Office of General Services ("OGS") is responsible for certifying eligible SDVOBs, assisting agencies and authorities in complying with the law, and promoting SDVOB participation in the state's procurement activities. Under this program, contracts may be awarded on a non-competitive basis to NYS-certified SDVOBs for discretionary purchases not exceeding \$200,000 in the aggregate. Alternately, contracts may be competitively bid exclusively among NYS-certified SDVOBs regardless of value, and advertised as such on the *Contract Reporter* website.
- J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as a Canal Corporation representative, a "competitive search" will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the

work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The NYPA SSM Department or the Canal Corporation Procurement Department staff will work with the initiating department to gather information from potential sources, that will include a description of the consultant/firm's qualifications, résumés of key personnel, past experience and proposed billing rates.

- K. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
 2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
 3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
 4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
 5. The contract is awarded to a Small Business or to a NYS-certified SDVOB or MWBE firm for discretionary purchases not exceeding \$200,000, pursuant to Section 3.D and as further set forth in Section 2.M.
 6. The contract is for the discretionary purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$200,000, as further set forth in Section 2.M and subject to the approvals stated in Section 3.D.
 7. The contract is for the discretionary purchase of commodities that are food, including milk and milk products, which are grown, produced or harvested in New York State, in an amount not exceeding \$200,000, as further set forth in Section 2.M and subject to the approvals stated in Section 3.D.
 8. Purchases made on a Sole Source, Single Source, or other non-competitive basis are subject to Public Authorities Law § 2879-a, 2 NYCRR Part 206, entitled "Comptroller Approval of Contracts Made by State Authorities" ("Comptroller Regulations") and the State Authority Contract Manual.
- L. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Canal Corporation may be required to submit certain contracts to the New York State Comptroller for approval that are awarded on a Sole Source, Single Source, or other non-competitive basis for the purchase of goods and/or services in an amount in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations.

- M. Subject to the Canal Corporation Expenditure Authorization Procedures (“EAPs”), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:
1. A threat to the health or safety of the public or Canal Corporation employees or workers.
 2. Proper functioning of the Canal Corporation facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- N. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the department head or other authorized equivalent per the EAPs will provide a written statement explaining the reasons therefor to the NYPA Vice President, SSM. The award of such Procurement Contracts, regardless of value, requires the written approval of the NYPA Vice President, SSM, except as noted in Section 3.H.
- O. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the NYPA President and CEO or the COO prior to processing by the NYPA SSM Department or Canal Corporation Procurement Department.
- P. In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the NYPA Chief Executive Officer and Chief Financial Officer stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the NYPA Vice President, SSM or authorized designee.
- Q. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Canal Corporation will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§ 139-j and 139-k, the following definitions shall apply:

1. A “Procurement Contract” is any contract or other agreement for a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property that is the subject of a governmental procurement, with an estimated annualized expenditure in excess of \$15,000. Grants, contracts between the Canal Corporation and non-profit organizations pursuant to Article 11-B of the State Finance Law, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions are not Procurement Contracts.
 2. The “Restricted Period” is the period of time commencing with the earliest posting, on the Canal Corporation website, in a newspaper of general circulation, or in the Procurement Opportunities Newsletter (i.e., *New York State Contract Reporter*) in accordance with Article 4-C of the Economic Development Law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method provided for by law or regulation for soliciting a response from offerors (i.e., bidders/contractors) intending to result in a procurement contract with the Canal Corporation and ending with the final contract award and approval by the Canal Corporation and, where applicable, the State Comptroller. The “Restricted Period” also applies to a “mini-bid” process that may be utilized in certain established OGS, GSA or Canal Corporation multiple award contracts, as provided in Section 3.F.
 3. The Canal Corporation shall designate a person or persons who may be contacted, with respect to each Canal Corporation procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Canal Corporation’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.
- R. In furtherance of the Canal Corporation commitment to ensure transparency and accountability of its operations, every member, officer or employee of the Canal Corporation who is contacted by a lobbyist is required to make a contemporaneous record of such contact, pursuant to Public Authorities Law § 2987.
- S. Project Sunlight (Chapter 399, Part A, Section 4 of the Laws of 2011) requires the Canal Corporation to record in a database maintained by the New York State Office of General Services certain appearances between the Canal Corporation and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal “Restricted Period.” Covered

individuals at the Canal Corporation means an employee who has the power to exercise discretion in procurement matters or advises someone who exercises such discretion. A covered individual outside of the Canal Corporation means both “external” (e.g., a lobbyist) and “internal” (e.g., sales representative) representatives of an entity, individuals appearing on behalf of him/herself, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to the Canal Corporation Ethics and Compliance Office for recording in the Project Sunlight database.

4. EVALUATION OF PROPOSALS

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder (including, but not limited to, the bidder’s skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the Canal Corporation Procurement Department and appropriate managers as stipulated in the EAPs. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the NYPA Vice President, SSM or equivalent(s) or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Canal Corporation work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder’s skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task

structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

Another Supplier Diversity Program factor to be considered in evaluating proposals may involve an assessment of the bidder's diversity practices, where applicable. Pursuant to Article 15-A of the Executive Law, diversity practices are the contractor's practices and policies with respect to utilizing NYS-certified MWBEs in contracts as subcontractors and suppliers, and entering into partnerships, joint ventures or other similar arrangements with NYS-certified MWBEs. A contractor's diversity practices may be assessed when: (1) a procurement is awarded on the basis of "Best Value" as described in Section 4.D. (but *not* when a procurement is awarded based upon "lowest price"); (2) the anticipated award is \$250,000 or greater; and (3) such assessment is practicable, feasible and appropriate. Such assessment shall not permit the automatic rejection of a bid or procurement contract proposal based on lack of adherence to diversity practices.

- C. For Services Contracts (as defined in Section 2.C of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts other than Personal Services (as defined in Section 2.C of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents. (See also Section 4.F regarding award to "other than low bidder".)

As a best practice and pursuant to State Finance Law § 163, the Canal Corporation will be transitioning to a "Best Value" basis for awarding contracts for services to the offeror that optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may also identify a quantitative factor for offerors that are Small Businesses or NYS-certified SDVOB or MWBE firms.

- E. Pursuant to § 139-k of the State Finance Law, the Canal Corporation shall not award a Procurement Contract (as defined in Subsection 3.Q.1 of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Canal Corporation policy providing for certain procurement disclosures shall result in a determination

of non-responsibility of such bidder/contractor pursuant to State Finance Law §§ 139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law § 139-k in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to “other than low bidder” can be made only with the approval of appropriate management as stipulated in the EAPs, and should be based on such a proposal providing a clear advantage to the Canal Corporation over the lower-priced proposal. Factors justifying an “other than low bidder” award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; the bidders’ financial resources or the ability to meet or exceed Supplier Diversity Program and SDVOB goals; and overall, the bidder’s skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Canal Corporation may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, the Canal Corporation deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

5. RECOMMENDATION OF AWARD

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
 - 1. Lump sum and/or unit prices for equipment and construction work.
 - 2. Hourly or daily rates for personnel.
 - 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
 - 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.

5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any, as well as Supplier Diversity Program requirements, as applicable.

6. AWARD OF CONTRACT

- A. Services Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months are approved and reviewed annually by the Canal Corporation Board of Directors. Services Contracts for a period of less than 12 months are approved by authorized designees in accordance with existing EAPs. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Canal Corporation Board of Directors at the request of the initiating department and will be reviewed by the Canal Corporation Board of Directors annually. Extending a contract for services, that has previously been approved by the Canal Corporation Board of Directors, for a cumulative term of more than 12 months requires further Canal Corporation Board of Director approval. Extending a contract, previously approved by the Canal Corporation Board of Directors, for 12 months or less (“grace period”) requires approval by the NYPA Vice President, SSM of the requesting department or other authorized equivalent or designee in accordance with existing EAPs and concurrence by the NYPA Vice President, SSM.
- B. For Services Contracts valued or estimated to be \$5,000 or greater to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Canal Corporation Board of Directors meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total term and value, such contract must be approved in writing by the appropriate management as set forth in the EAPs. Such contract is subject to the Canal Corporation Board of Directors’ approval, at the next quarterly Canal Corporation Board of Directors’ meeting. If such approval is not granted, the contract will be terminated immediately.
- C. A contract or contract task valued or estimated to be \$5,000 or greater is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any “continuing services” contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Canal Corporation Board of Directors-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a “Change Order,” “Purchase

Order” or “Task Number”) is considered a separate commitment and must be separately approved in accordance with the EAPs.

- D. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions.
- E. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAPs, the Department Head, with the prior concurrence of the NYPA Vice President, SSM or equivalent(s) or designee, may authorize extending such contract, subject to the Canal Corporation Board of Directors ratifying such action as soon as practicable.
- F. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAPs, interim approval by the NYPA President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Canal Corporation Board of Directors ratifying such action as soon as practicable.
- G. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAPs, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the NYPA Vice President, SSM or equivalent(s) or designee, may authorize in writing the commencement of such services. The initial compensation limitation may not exceed the authorization level for the NYPA President and Chief Executive Officer or equivalent(s) or Chief Operating Officer or equivalent(s) as set forth in the EAPs. Such contracts will be subject to the Canal Corporation Board of Directors approval, which will be solicited at their next scheduled Canal Corporation Board of Directors meeting.
- H. The NYPA SSM or the Canal Corporation Procurement Department prepares the contract for execution by the Canal Corporation and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Canal Corporation signatories of such letters must be authorized to approve contract awards pursuant to the EAPs.
- I. Pursuant to Public Authorities Law § 2879, the Canal Corporation shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneously with notifying the successful bidder therefor. The Canal Corporation shall not enter into the Procurement Contract for

said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the NYPA SSM Department or Canal Corporation Procurement Department: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.

Canal Corporation departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the NYPA SSM Department and the Canal Corporation Procurement Department, which are responsible for requesting proposals.

- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.
1. Schedule of Services or Specifications
 2. Time of Completion
 3. Compensation or Itemized Proposals
 4. Relationship of Parties
 5. Delays
 6. Termination
 7. Changes in the Work
 8. Claims and Disputes
 9. Warranty
 10. Insurance
 11. Records, Accounts, Inspection and Audit
 12. Assignment
 13. Notices

14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. MWBE requirements
19. SDVOB requirements
20. Entire Agreement

Contract Attachments

1. Compensation Schedule
 2. Schedule of Services or Specifications
 3. Appendix “A” (Miscellaneous Statutory Provisions)
 4. Appendix “B” (Prompt Payment Provisions)
 5. Appendix “C” (Minority- and Women-owned Business Enterprise (MWBE) Participation Goal Requirement)
 6. Appendix “D” (Background Security Screening for Authority Contractors)
 7. Appendix “E” (Omnibus Procurement Act of 1992 Requirements)
 8. Appendix “F” (Computer Aided Design Requirements For New York Power Authority Drawings)
 9. Appendix “G” (Equal Employment Opportunities Requirements)
 10. Appendix “H” (Tax Law Requirements)
 11. Appendix “I” (New York Power Authority (NYPA) North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) Cyber Access And/Or Unescorted Physical Access Training Requirements)
 12. Appendix “J” (Bidder/Contractor Compliance with State Finance Law §§ 139-j and 139-k Providing for Certain Procurement Disclosures)
 13. Appendix “K” (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub. L. No. 111-5 Stat. 2009) (“ARRA”) Funded Projects) - inactive
 14. Appendix “L” (DOE Federal Contract Provisions) - inactive
 15. Appendix “M” (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology (“BART”) for Heavy Duty Vehicles)
 16. Appendix “N” (The New York State Iran Divestment Act of 2012 – Iranian Energy Sector Divestment)
 17. Appendix “O” (Encouraging Use of New York State Businesses in Contract Performance) – inactive
 18. Appendix “P” (Information Security Requirements for Vendors and External Partners)
- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services.

Furthermore, any firm, person or other entity retained by the Canal Corporation to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work.

The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal;
3. There is no qualified response to the solicitation for future phases of work, including implementation; or
4. The originating Canal Corporation Department determines in writing that the restrictions are not in the best interests of the Canal Corporation. Such originating Department shall obtain the approval of the applicable Department Head or equivalent(s), NYPA Vice President, SSM or equivalent(s) or designee, NYPA Assistant General Counsel or equivalent(s) and NYPA President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

8. CHANGE ORDERS

A. Change Orders to existing contracts are justified in the following cases:

1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
3. To accommodate emergency conditions, defined in Section 3.M herein, that require the immediate performance of work by a firm already under contract;
4. When rebidding would not be practical or in the best interests of the Canal Corporation customers; and
5. To meet the Canal Corporation Supplier Diversity and SDVOB Program goals in accordance with Executive Law Articles 15-A and 17-B, respectively.

B. All Change Orders must be approved in accordance with the Canal Corporation EAPs, and should include specific schedules for completion of work at the earliest possible time.

- C. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Canal Corporation may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement.

9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES

- A. Former Canal Corporation officers and employees may be eligible to be considered for direct engagement as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their engagement is not barred by New York Public Officers Law § 73(8); they obtain an opinion by the New York State Joint Commission on Public Ethics that such engagement is permissible; and upon approval of the NYPA President and Chief Executive Officer, as well as the Chairman of the Canal Corporation Board.
- B. Pursuant to the provisions of New York Public Officers Law § 73(8):
1. No Canal Corporation officer or employee is eligible, within a period of two years after the termination of Canal Corporation service to appear or practice before the Canal Corporation or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Canal Corporation.
 2. No Canal Corporation officer or employee is eligible, at any time after the termination of Canal Corporation service, to appear, practice, communicate or otherwise render services before the Canal Corporation or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.
 3. Pursuant to the provisions of New York Public Officers Law § 73(8-b), notwithstanding the provisions of 1. and 2. above, a former Canal Corporation officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to the Canal Corporation, if, prior to engaging in such service, the Chairman of the Board of Directors certifies in writing to the New York State Joint Commission on Public Ethics that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the Canal Corporation needs and is otherwise unavailable at a

comparable cost. Where approval of the contract is required under § 112 of the New York State Finance Law, the Comptroller shall review and consider the reasons for such certification. The New York State Joint Commission on Public Ethics must review and approve all such certifications.

- C. No Canal Corporation employee who is involved in the award of Canal Corporation grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- D. No Canal Corporation employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Canal Corporation employee may take part in any contracting process or decision: (i) to a Relative; or (ii) to any entity in which the Canal Corporation employee or a Relative of such Canal Corporation employee owns or controls 10% or more of the stock of such entity (or 1% 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. If a contracting matter arises relating to this Section 9.E, then the employee must advise in writing his or her supervisor and the Office of Ethics and Compliance of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
 - 1. For purposes of this Section 9.E, the term "Relative" is defined in Definitions, Section 2.G of these Guidelines.

10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS

The Canal Corporation strives to continue to foster the development of business opportunities on Canal Corporation contracts for MWBEs. Article 15-A of the Executive Law established the NYS Office (now Division) of Minority and Women's Business Development ("DMWBD") that is responsible for developing rules and regulations for implementation of this statute, certifying MWBEs and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an MWBE is included in Section 2.H of these Guidelines. The Canal Corporation aims to solicit proposals from NYS-certified MWBEs that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services

requiring the contractor/vendor to subcontract a portion of the work to NYS-certified MWBEs as required by law. Bidders' proposals will include a completed preliminary Utilization Plan Form for MWBEs, as well as applicable EEO and Diversity Practices Forms, where required. Such bidders' failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award. Final MWBE Utilization Plans for Construction contracts valued at more than \$100,000 shall be provided and posted on the Procurement website by the successful vendor within ten business days of contract signing.

Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Canal's Corporation Supplier Diversity Program documents, the following guidelines apply:

1. Identify those areas or types of contracts for which MWBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.
2. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve MWBEs providing the types of services procured by the Canal Corporation.
3. Maintain lists of qualified NYS-certified MWBEs, including professional firms that have expressed an interest in doing business with the Canal Corporation and ensuring that such lists are updated regularly. The Canal Corporation shall also consult the lists of NYS-certified MWBEs maintained by the DED pursuant to Executive Law Article 15-A.
4. Establish appropriate goals for participation by MWBEs in procurement contracts awarded by the Canal Corporation and for the utilization of MWBEs as subcontractors and suppliers by entities having procurement contracts with the Canal Corporation. Statewide numerical participation target goals shall be established by the Canal Corporation based on the criteria set forth in Public Authorities Law § 2879.
5. Conduct procurements in a manner that will enable the Canal Corporation to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by MWBEs in the Canal's Corporation procurements.
6. Designate one or more senior staff of the Canal Corporation to oversee the Canal's Corporation programs established to promote and assist participation by and utilization of NYS-certified MWBEs.

11. SERVICE-DISABLED VETERAN-OWNED BUSINESS ("SDVOB") PROGRAM REQUIREMENTS

The Canal Corporation also strives to foster the development of business opportunities for NYS-certified SDVOBs and to further increase participation by SDVOBs in Canal Corporation contracts, as set forth in Sections 2.L and 3.I of these Guidelines and pursuant to Article 17-B of the Executive Law. One tool is the use of SDVOB discretionary

purchasing, as further described in Sections 3.D, I and K of these Guidelines. Another tool authorized by the law is the use of set-asides, which permit the reservation in whole or in part of certain procurements by state agencies and authorities when more than one NYS-certified SDVOB is available and can provide the necessary goods or services to meet the Canal Corporation form, function and utility. The same dollar limits apply to SDVOB contracts as those set forth for MWBEs in Article 10 of these Guidelines.

Pursuant to Article 17-B of the Executive Law, the following guidelines apply:

1. Identify contracts where SDVOBs may best perform and/or where SDVOB goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOB participation on Canal Corporation contracts.
2. Submit regular reports with respect to SDVOB Program activity, including but not limited to, utilization reporting and contract monitoring and compliance.
3. Achieve an overall goal of six percent for SDVOB participation on Canal Corporation contracts.

12. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM
REQUIREMENTS ON PROJECTS THAT ARE FEDERALLY FUNDED

The Canal Corporation (“Canals”) strives to foster the development of business opportunities for NYS certified DBEs and to further increase their participation in Canals Federally funded contracts. The Canals aims to solicit proposals from DBEs for procurements that will be partially or fully federally funded. The Canals follows the DBE guidelines as set out by The Federal Department of Transportation (“DOT”). NYS DOT is tasked with certifying eligible small businesses as DBEs in New York State.

The Canals is committed to promoting participation of DBEs in Canals contracting opportunities in accordance with federal law and regulations and seeks to achieve the following objectives:

1. To ensure nondiscrimination in the award and administration of Federally funded contracts in the canals and waterways;
2. To create a level playing field on which DBEs can compete fairly for Federally funded contracts;
3. To ensure that the Canals’ DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this Federal eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in Federally funded contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

13. PROCUREMENT RECORD AND REPORTING

A. Procurement Record

The NYPA SSM Department or the Canal Corporation Procurement Department maintains records of Procurement Contracts. In addition to bid- and contract award-related documents for the goods provided and/or services performed, the Procurement Record includes, but is not limited to, documentation of the decisions made and the approach taken in the procurement process. Such records may be transmitted to a digital warehouse for electronic storage and retrieval.

B. Procurement Report

After the end of each calendar year, the NYPA Vice President, SSM or equivalent(s) will prepare and submit an annual report to the Canal Corporation Board of Directors for their approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A list of fees, commissions or other charges paid;
5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified MWBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
6. The type of contract (equipment, services, personal services or construction);
7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
8. The reasons why any procurements with a value equal to or greater than \$50,000 were not noticed in the Contract Reporter;
9. The number of bids received and
10. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.

- C. Such annual report, as approved by the Canal Corporation Board of Directors, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, and copies thereof shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual procurement report is posted on the Canal Corporation website and copies shall be made available to the public upon reasonable written request therefor.
- D. State Finance Law §§ 139-j and 139-k
1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§ 139-j and 139-k only) and the Canal Corporation decision not to award a bidder/contractor the Procurement Contract must be included in the procurement record.
 2. The Canal Corporation shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§ 139-j and 139-k only) or debarred due to violations of § 139-j of the State Finance Law.
 3. All forms entitled "Record of Contact" shall be included in the respective procurement record.
 4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the procurement record.
- E. The Canal Corporation may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as Canal Corporation's Budget Office through the Public Authorities Reporting Information System ("PARIS").
- F. The NYPA Vice President, SSM or equivalent(s) will also prepare Annual Goal Plans for the MWBE and SDVOB programs and will submit them by January 15 of each year to Empire State Development - Division of Minority and Women Business Development and the New York State Office of General Services - Division of Service-Disabled Veterans' Business Development, respectively. Quarterly Utilization / Activity Reports for each program will also be prepared and submitted to the aforementioned respective state entities by the 15th day of July, October, January and April.

14. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS

- A. These Guidelines are intended for the guidance of officers and employees of the Canal Corporation only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.

- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

Policy Title:

Guidelines for the Disposal of Canal Corporation Personal Property

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Revision Date(For BCG Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
7/30/2017	0	Policy for the Disposal of Canal Corporation Personal Property	N/A	Kevin King Director Transactional Procurement

Title: Guidelines for the Disposal of Canal Corporation Personal Property

Guidelines for the Disposal of Canal Corporation Personal Property

1 PURPOSE AND SCOPE

This Policy for the disposal of Canal Corporation (“Corporation”) Personal Property, (“Policy”) which complies with Title 5-A, Article 9 of the Public Authorities Law, establishes the Corporation’s Policy and instructions regarding the use, award, monitoring and reporting of the disposal of personal property. In addition, the Policy designates a Contracting Officer who is responsible for the Corporation’s compliance with, and enforcement of, the Policy.

The powers and duties relating to the New York State canal system, which were transferred to and merged with the New York Power Authority (“Authority”) pursuant to Canal Law Section 5, may be exercised by the Authority directly or through the Corporation on behalf of the people of the State of New York.

2 APPLICABILITY

This Policy applies to all New York State Canal Corporation employees who intend to dispose of personal property owned by the New York State Canal Corporation.

3 INITIALISMS (ACRONYMS) AND DEFINITIONS

Abandoned Motor Vehicles – An Abandoned Motor Vehicle is a type of Tangible Personal Property with special statutory and regulatory requirements for disposal and processing (see Section 5.2.A.).

Abandoned, Lost or Found Personal Property – Abandoned, Lost or Found Personal Property that remains unclaimed after notification to an owner, if known, and/or after being held for the required holding periods as prescribed by statute. This includes all lost or mislaid property found on Corporation property/premises, as well as property which is knowingly abandoned.

Contracting Officer – Shall mean the officer or employee of the Corporation who shall be appointed by resolution of the Canal Board to be responsible for the disposition of Personal Property. The “Contracting Officer” is hereby designated to be the Authority’s Vice President - Procurement or equivalent(s) by law.

Corporation – Canal Corporation

Disposals – Disposals include the sale of Personal Property, the transfer of title or any beneficial interest in Personal Property in accordance with this Policy such as leases, and the exchange of Personal Property. Disposals do not include permits, licenses or temporary use documents that are otherwise revocable due to operational requirements or in the best interests of the Corporation. Consistent with prior Board action, permits do not convey or transfer a beneficial interest in the Personal Property.

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Fair Market Value – Shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by consulting industry-recognized sources, contracting original suppliers, depreciation analysis, appraisals, fair market valuations by public auction or other methods of valuation generally accepted in the industry in which such Property is utilized, as may be approved by the Contracting Officer or authorized designee.

Personal Property – Property, other than Real Property, owned by the Corporation, regardless of value, and any other interest in such property, 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. Property may include, but is not limited to, materials (Canal Corporation Warehouse controlled inventory and Direct Turnover Materials DTO), tools, equipment or vehicles. Section 2895 of the Public Authorities Law defines property as Personal Property in excess of \$5,000 and does not include the transfer of Personal Property secured by a loan or other financial obligation of another party.

Real Property – shall mean real property, including land, tenements and hereditaments owned by the Corporation, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

Transactions – For purposes of this Policy, transactions shall include, but not be limited to, disposals and the issuance of permits, licenses and other temporary use documents for the use of Personal Property.

4 RESPONSIBILITY

The Board shall adopt by resolution, this Policy for the Disposal of Canal Corporation Personal Property and by such resolution, designate a Contracting Officer who is responsible for compliance with and enforcement of this Policy.

All Transactions shall comply fully with applicable state, federal and local laws, rules and regulations as well as policies, procedures and executive orders including, but not limited to, the Canal Law, the Abandoned Property Law, the Personal Property Law, the Public Authorities Law, the Vehicle and Traffic Law and any subsequently enacted statutes, rules and/or regulations.

The Corporation Deputy Director is authorized to interpret, implement, and administer this Policy and shall develop procedures necessary to carry out its intent, as well as to delegate such authority to members of his/her staff. These procedures should identify the roles and

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For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

Guidelines for the Disposal of Canal Corporation Personal Property

responsibilities of Corporation personnel who implement and administer this Policy and define the manner in which those responsibilities are to be fulfilled. The Deputy Director is also authorized to oversee the actions of Corporation staff to ensure compliance with applicable laws, rules and regulations, and with this Policy.

The Deputy Director may delegate, expressly in writing, directly to the Contracting Officer, the authority to sign and execute any and all documents related to any form of property auction or other disposal methods and may also authorize the Contracting Officer to further delegate such authorization to other members of his/her staff in order to carry out the intent of this current Policy.

The Manager, Administrative Services ensures that Personal Property is disposed of in accordance with this Policy and that each disposal is documented, including photo(s) of material/item, fair market evaluation, environmental documentation, accounting records, RFQs and bid abstracts, award documents, copies of payment check or wire service receipts, and signed sales agreements.

5 POLICY IMPLEMENTATION

5.1 General Principles

The Corporation shall maintain adequate inventory controls and accountability systems for all Personal Property under its control.

- A. Personal Property that is 1) encroaching on real property under the jurisdiction of the Corporation; or 2) located on real property under the jurisdiction of the Corporation that is: (a) not authorized by the applicable permit, license or lease; or (b) left behind following the expiration, revocation or termination of a permit, license or lease; shall be handled in accordance with this Policy, the terms and conditions of the lease, license or permit regarding the removal of such property, and/or the Canal Law, if applicable.
- B. The Corporation may dispose of any Personal Property not necessary for its corporate purposes in whatever timeframe that either the Contracting Officer or the Corporation Board deems appropriate.
- C. The Corporation may authorize the use of Corporation Personal Property by an entity for any period or term using a temporary, revocable permit, license or other document that does not transfer a beneficial interest in the Personal Property. Such temporary, revocable use is not considered a Disposal for purposes of this Policy.
- D. Personal Property shall not be disposed of by the Corporation for less than fair market value, except in limited circumstances as set forth in Paragraph E, sections 1, 2 and 3 below. Fair Market Value may be determined through the use of appraisals, requests for proposals, the bid or auction process, or other means.

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- E. No asset owned, leased or otherwise in the control of the Corporation with a value in excess of \$5,000 may be sold, leased, or otherwise alienated for less than its fair market value except if:
1. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
 2. the purpose of the transfer is within the purpose, mission or governing statute of the Corporation; or
 3. in the event the Corporation seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the Corporation's mission, purpose or governing statutes, the Corporation shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the legislature receives notification of a proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the Corporation may effectuate such transfer.
- F. In the event a below fair market value asset transfer is proposed, the following information must be provided to the Corporation Board and the public:
1. a full description of the asset;
 2. an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Corporation Board;
 3. 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, if any, to the communities in which the asset is situated as are required by the transfer;
 4. a statement of the value to be received compared to the fair market value;
 5. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (4) of this paragraph, a statement of the value to the private party; and
 6. the names of any other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
- G. Before approving the disposal of any property for less than fair market value, the Corporation Board shall consider the information described in paragraph F of this section

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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.

- H. The Corporation must use a competitive process as required by the Public Authorities Law and related statutes, including public advertising for Disposals exceeding \$15,000 in value, except in limited circumstances. In order to dispose of Personal Property by negotiation or public auction without public advertising, but subject to obtaining competition as is feasible under the circumstances, one of the following must be met:
1. 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 public advertising, 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;
 2. The fair market value of the property does not exceed \$15,000;
 3. Bid prices after advertising are not reasonable, either as to all or some part of the Personal Property, or have not been independently arrived at in open competition;
 4. The Disposal will be to the State or any political subdivision, and the estimated fair market value of the Personal Property and other satisfactory terms of disposal are obtained by negotiation;
 5. Under those circumstances permitted by Section 5.1 (Paragraphs E, F, and G) of this Policy; or
 6. The action is otherwise authorized by law.
- I. For Personal Property valued at over \$15,000 disposed of by negotiation, an explanatory statement is required. Not less than 90 days in advance of the Disposal, an explanatory statement shall be prepared and distributed by the Contracting Officer in accordance with Public Authorities Law §2897, detailing the circumstances of the Disposal including, but not limited to, the proposed price.
- J. The Corporation shall create a clear and comprehensive record for each Transaction that documents its compliance with this Policy. Such record shall be maintained in a manner and for a period consistent with the applicable document retention policy.

5.2 General Practices

- A. Abandoned Motor Vehicles - The handling and disposal of Abandoned Motor Vehicles is statutorily covered under Vehicle and Traffic Law and not under this Policy.
- B. Abandoned, Lost or Found Personal Property

Abandoned, Lost or Found Personal Property with a value over the statutory limits must, within ten days after the finding or acquisition by Corporation employees or the

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

Records will be retained in accordance with NYPA's approved records retention schedules and/or in compliance with all applicable legal requirements pertaining to NYPA.

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Corporation's related agents (for example, contractor), be turned over to Troop T for processing and forwarding to the Bureau of Office and Building Maintenance Services (Office Services) at Headquarters in Albany. Office Services will return the property to the owner, if known; if the owner of the property is not immediately known, then the property must be held until the statutory holding period has run. At that time, if the property has not been claimed by the true owner or someone with verifiable ownership rights, then Office Services shall return the property to the known independent finder. If the original finder was a Corporation employee or one of its related agents as defined above, ownership then vests in the Corporation and may be treated as other Corporation owned property.

C. Special Abandoned Personal Property

1. Personal Property purposely left behind on Corporation property after termination of a previously issued permit, license or lease shall be handled, removed or disposed of under the terms of the permit, license or lease, or if required, pursuant to the applicable provisions of the Canal Law governing encroachments.
2. Abandoned Personal Property originally issued by the Corporation such as unclaimed wages or benefits, or unclaimed consumer balances shall be held for the required holding times as prescribed by the Personal Property Law and Abandoned Property Law, at which time the property vests in the Corporation.
3. Other Personal Property such as unclaimed bonds, dividends, interest, securities, etc. owed to security holders shall be held for the required statutory periods by the Corporation's properly delegated trustees or other fiduciaries.

D. Surplus Personal Property

The (Manager, Administrative Services) will provide the (Deputy Director) or designee with information on all items of Personal Property declared surplus.

5.3 Disposal Process

The (Manager, Administrative Services) designee will prepare a list of all Personal Property to be disposed of and prepare an internal estimate of the value of such property.

A. The method of disposal shall be based on the following Personal Property values:

1. Personal Property valued at less than \$1,000 may be sold or donated, or when having an estimated resale value less than the cost of handling and sale may be disposed of as scrap or junk;
2. Solicitation via telephone, email, and/or direct mailings may be used where the estimated Fair Market Value of the Property to be disposed of does not exceed \$15,000. All bids must be submitted in writing on the Corporation generated forms or an appropriate substitute and in the manner prescribed by this Policy and by the date and time (the "Bid Due Date") included in the solicitation.

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3. Personal Property valued in excess of \$5,000 up to and including \$15,000 may be negotiated or made by public auction without publicly advertising for bids when approved by the Contracting Officer or, where required, by the Board, such as in Section 5.1 (paragraphs E and F);
4. Personal Property valued in excess of \$15,000 shall be offered for sale by a formal competitive process that includes public advertising for bids unless one of the exceptions listed in Section 5.1 E is met. If such an exception exists, disposal may be by negotiation or public auction without public advertising, when approved by the Contracting Officer or, where required, by the Board, such as in Section 5.1.G.

Note: For Personal Property valued in excess of \$15,000 disposed of by negotiation, an explanatory statement is required as described in Section 5.1.I.

- B. When public advertising is required for disposals, the following steps must be taken pursuant to Public Authorities Law §2897:
1. The advertisement 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 Personal Property;
 2. All bids shall be publicly disclosed at the time and place stated in the advertisement; and
 3. The award shall be made with reasonable promptness by notice to the responsible bidder whose bid, in conformance with the solicitation, will be most advantageous to the Corporation, price and other factors considered, provided that any and all bids may be rejected when it is in the public interest to do so.
- C. When property is sold by sealed bid, by public auction or by an electronic auction, sale prices are approved by the (Manager, Administrative Services) or designee. If the (Manager, Administrative Services) or designee determines that property should be offered at an established or set price due to its unusual nature, or any other special conditions that would make competitive bidding impractical, (Manager, Administrative Services) or designee will recommend an acceptable price and a method of sale to the Contracting Officer for approval.
- D. If the (Manager, Administrative Services) or designee determines that the best interests of the Corporation are served by selling at public auction, the Manager, Administrative Services) or designee shall supervise the auction and may reject any and all bids considered to be unacceptable.
- E. Where permitted by law, Disposals may be performed by the Commissioner of General Services on behalf of the Corporation when the Corporation has entered into an agreement with the Commissioner of General Services pursuant to Public Authorities Law and/or other applicable statutes.

Guidelines for the Disposal of Canal Corporation Personal Property

5.4 Reports

The Corporation will annually develop and distribute reports regarding Personal Property having a Fair Market Value in excess of \$5,000 that was disposed of during the reporting period, including the full description, price (if any) received and the name of the purchaser for all such Property disposed of by the Corporation during such period as required by law. The report shall be delivered to the comptroller, the director of the budget, the commissioner of general services, the legislature and the authorities budget office.

5.5 Procurement of Surplus Personal Property by Employees

Corporation employees and relatives of such employees or third parties acting on behalf of such employees shall not have any personal interest in, or engage in, any activity, inclusive of bidding for the purchase of Canal Property that would create or appear to create a conflict with the proper discharge of their public duties and are prohibited from subsequently acquiring in any manner. It is important, even in the absence of any impropriety, that no appearance of impropriety is given. Therefore, pursuant to the Public Officers Law, all Corporation employees, their spouses and any children and stepchildren under age 18, stepparents, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, nephew, niece, mother in law, father in law, sister in law, brother in law, daughter in law, son in law are prohibited from procuring Corporation Surplus Personal Property or otherwise securing such property through the use of an agent or other third party.

In addition, Corporation employees, other than the Manager, Administrative Services or designee, shall not disclose to any non-employee any information that they obtain regarding such property due to the nature of their employment. Such disclosure by the Manager, Administrative Services or designee shall only be made in the course of the proper discharge of their official duties.

5.6 Signing Authority

1. The Board, if the Fair Market Value of the Property is greater than \$500,000 or if the Disposal is for less than Fair Market Value in accordance with Section 5. (paragraphs F and G).
2. The Contracting Officer if the Fair Market Value is up to \$500,000.00.
3. The (Deputy Director) if the Fair Market Value is up to \$100,000.00.
4. The (Manager, Administrative Services) if the Fair market Value of the Property is \$5,000 or less.
5. For Fleet related transactions, the Vice President of the Power Authority's Enterprise Shared Services or equivalent(s), if the Fair Market Value of the Property is up to \$500,000.
6. For Fleet related transactions, the Director of the Authority's Fleet Operation, if the Fair Market Value of the Property is up to \$100,000.

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- 5.7** The President and Chief Executive Officer issues and approves all Company Policies and policy revisions.
- 5.8** The Executive Vice President and General Counsel, as delegated by the President and Chief Executive Officer, coordinates and administers the Company Policy Program.
- 5.9** At the request of the Executive Vice President and General Counsel, all Authority Business Units and Department Heads shall support and provide assistance in the coordination and administration of this Policy.

6 VIOLATIONS

Violations of this Policy and related policies and procedures by employees may result in disciplinary action up to and including termination. Violations of this Policy by contractors and other authorized third parties may result in the revocation of such party's access to Corporation premises and/or electronic access to its systems, and the termination of such party's contract for services. In addition, where the conduct engaged in is illegal, violators may be subject to prosecution under applicable federal, state or local laws.

7 REFERENCES

Abandoned Property Law
Canal Law
Canal Personal Property Disposal Policy 25-6-02C
Personal Property Law
Public Authorities Accountability Act
Title 5-A, Article 9 of the Public Authorities Law
Vehicle and Traffic Law

8 POLICY REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

Revision cycle : Every Year

9 ATTACHMENTS

Attachment 9.1: Sales Agreement

Printed copies are not controlled.

For the latest revision of this document, refer to the Policy and Procedure PowerNet Site.

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Guidelines for the Disposal of Canal Corporation Personal Property

ATTACHMENT 9.1

PERSONAL PROPERTY SALES AGREEMENT

_____, the Buyer, and the New York State Canal Corp ("Canal Corp"), agree as follows:

- 1) The personal property identified herein is sold by the Canal Corp and purchased by Buyer "AS IS, WHERE IS" at the price(s) shown, plus any applicable sales tax.
- 2) **THE CANAL CORP DOES NOT IN ANY WAY WARRANT THE FITNESS OF THE PERSONAL PROPERTY FOR ANY PARTICULAR USE OR ITS MERCHANTABILITY AND DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE QUALITY, CHARACTER, PERFORMANCE, OR CONDITION OF THE PERSONAL PROPERTY OR ANY OF ITS COMPONENT PARTS, ASSEMBLIES, OR ACCESSORIES.**
- 3) The Buyer warrants that he/she/it is not a current or former Canal Corp employee, is not related to a Canal Corp employee and did not bid on behalf of a Canal Corp employee. Buyer is aware that Canal Corp employees and their family members are precluded from subsequently receiving, or acquiring, in whole or in part, by any manner including gift, sale, loan or lease, the personal property acquired by the Buyer pursuant to this sale. The term "related to" as used in this paragraph means the relationships of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, or son-in-law. The Canal Corp reserves the right to invoke any available legal or equitable remedy in the event of a breach by the Buyer of his or her warranty under this paragraph, including but not limited to, rescinding the sale and recovering the property sold and all costs associated with the sale and the rescission of said sale.
- 4) The Buyer shall indemnify and hold harmless the State of New York, New York Power Authority and the Canal Corp and all of its officers, agents and employees from any loss, damage, remedial or response cost, liability or expense, on account of damage or contamination to property and injuries, including death, to all persons, including Buyer's employees, or any third parties, arising or in any manner growing out of the sale of any personal property or the performance of any work under this agreement and shall defend at its own expense any suits or other proceedings brought against the State of New York, New York Power Authority and the Canal Corp and its officers, agents and employees, or any of them, on account thereof, and pay



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all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection therewith.

5) Except for disposals by public auction, the Buyer shall remove the personal property from the Canal Corp premises by _____ at Buyer's expense. The Buyer shall make payment upon delivery by certified check payable to the New York State Canal Corporation.

Description of Personal Property:

Selling Price: _____

Executed this _____ day of _____, 20_____.

Buyer (Print or Type):

Seller:

New York State Canal Corporation
30 South Pearl Street
Albany, New York,

Authorized Signature

Authorized Signature

Full Name (Printed)

Title

Title

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PRIVACY LAW NOTIFICATION

SECTION 94(1)(d) OF THE NEW YORK PUBLIC OFFICERS LAW REQUIRES THIS NOTICE TO BE PROVIDED WHEN COLLECTING PERSONAL INFORMATION FROM POTENTIAL PURCHASERS OF CANAL CORPORATION PROPERTY.

This information is requested pursuant to Article 5, Title I of the Public Authorities Law. The principal purpose for which the information is collected is to assist the New York State Canal Corporation in the sale of Canal Corp personal property in accordance with Section 96(1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e) and (f).

Failure to provide the requested information may result in ineligibility for participation in a program, sale or benefit provided by the Canal Corp.

This information will be maintained by the Procurement Department at the New York State Canal Corp Corporate Office.

**New York State Canal Corporation
Expenditure Authorization Procedures
Approval Limits Applicable to Requisitions for Procurement and**

**Exhibit 2b-C
March 20, 2018**

Title	Low Bidder or Best Value	Non-competitive, Sole or Single Source	Cumulative Change Order Limit (Subject to Rebidding Thresholds, see page 3)
Director of Design / Construction Management / Dam Safety	to \$1,000,000	to \$500,000	to \$250,000
Manager Planning & Environmental Services, Manager Engineering & Maintenance, Policy & Program Development Director Special Projects, Manager Administrative Services, Division Canal Engineer Civil Engineer 5	to \$2,000,000	to \$750,000	to \$500,000
Deputy Director Engineering, Construction & Maintenance, Executive Deputy	to \$3,000,000	to \$750,000	to \$500,000
Canal Corporation Chief Operating Officer	to \$6,000,000	to \$6,000,000	to \$6,000,000
Canal Board	over \$6,000,000	over \$6,000,000	over \$6,000,000

Non-Procurement Contracts Excluding Personal Services Contracts

Approval Limits for Personal Service Contracts

Title	Low Bidder or Best Value	Non-competitive, Sole or Single Source	Cumulative Change Order Limit (Subject to Rebidding Thresholds, see page 3)
Director of Design / Construction Management / Dam Safety	to \$100,000	to \$50,000	to \$50,000
Manager Planning & Environmental Services, Manager Engineering & Maintenance, Policy & Program Development Director Special Projects, Manager Administrative Services, Division Canal Engineer Civil Engineer 5	to \$200,000	to \$100,000	to \$50,000
Deputy Director Engineering, Construction & Maintenance, Executive Deputy	to \$500,000	to \$250,000	to \$125,000
Canal Corporation Chief Operating Officer	to \$2,000,000	to \$1,000,000	to \$500,000
Canal Board	over \$2,000,000	over \$1,000,000	over \$500,000

Notes:

1. "Low Bidder or Best Value" approval limits also apply to Individual Purchase Order Releases (PORs) from active Value Contracts, up to the Chief Operating Officer level. The Chief Operating Officer can approve PORs up to the full authorization amount of a Value Contract.
2. Single and Sole Source Contracts valued or estimated at \$1 million or greater require review for approval by the NYS Comptroller. Change orders (competitively bid or non-

competitively bid) valued or estimated at \$1 million or greater requires NYS Comptroller notification.

3. Canal Corporation Board approval is also required when:

- A. The term of a Personal Services, Non-Personal Services or Construction contract including any extensions or options, exceeds 1 year.
- B. The initial term of less than 1 year for a Personal Services, Non-Personal Services or Construction contract extends beyond 1 year.
- C. Cumulative Change Orders exceed \$500,000 for Personal Services contracts or \$6 million for all other procurement and non-procurement contracts.

**New York State Canal Corporation
Expenditure Authorization Procedures
Limits for the Execution of Contract Documents**

Procurement Team Specialist (Below Grade 18)	to \$5,000
Senior Procurement Team Specialist (Grade 18)	to \$50,000
Procurement Team Manager (Grade 23 thru 25)	to \$250,000
Manager Administrative Services	to \$500,000
Executive Deputy	to \$750,000
NYPA VP - Enterprise Shared Services (Real Estate and Fleet Disposal Transactions only)	to \$3,000,000
Canal Corporation Chief Operating Officer	to \$10,000,000
NYPA VP – Strategic Supply Management (Procurement)	to \$20,000,000
NYPA President, Chairman or Chief Operating Officer	over \$20,000,000

(Includes all Purchase Orders, Contracts and Change Orders)

Notes:

1. All delegations of authority must be in writing.

CHANGE ORDER APPROVALS AND REBIDDING THRESHOLDS

1. A) For contracts with initially approved amounts of **\$100,000 or less**, rebidding will occur when the total cumulative value of change orders exceeds \$25,000.

B) **If rebidding is not feasible**, any request to increase funding for such contracts must be supported by a detailed memorandum explaining the need for additional funding in excess of the \$25,000 threshold. The memorandum shall be approved by the Executive Deputy level or above and forwarded to the NYPA VP, Strategic Supply Management (SSM) for review and final approval.
2. A) For contracts with initially approved amounts **exceeding \$100,000**, rebidding will occur when the total cumulative value of change orders exceeds 25% of the original amount approved.

B) **If rebidding is not feasible**, any request to increase funding for such contracts must be supported by a detailed memorandum explaining the need for additional funding in excess of 25% of the original amount approved. The memorandum shall be signed by the Executive Deputy level or above and forwarded to the NYPA VP, SSM for review, followed by transmittal to the NYPA President, Chairman or Chief Operating Officer for approval, prior to obtaining the Canal Board's approval.
3. Rebidding should commence as soon as it is recognized that the contract value will exceed these thresholds, even if the term of the contract is not complete.
4. Once the approval of such additional funding is received, any subsequent increase in funding requires an additional memorandum for the NYPA President's, Chairman's or Chief Operating Officer's approval, until either the Canal Board's approval is obtained or the Contract is rebid.
5. Typical bases for additional funding in excess of the 25% threshold include an "emergency condition" (as defined in Canal Corporation Guidelines for Procurement Contracts) which necessitates the additional funding; a situation where it is impractical to rebid (e.g., a construction project where it would not be reasonable to change contractors) or other reasons as provided for in the Procurement Guidelines. Under-estimating the scope of a Contract or failure to rebid in a timely fashion are not acceptable reasons for increasing its value by more than 25%.

New York State Canal Corporation
Expenditure Authorization Procedures

Exhibit 2b-C-1
March 20, 2018

Approval Limits – Requisitions for Commitments:

Non-Personal Services, Personal Services, Construction, Equipment Purchases and Non-Procurement Contracts

Title	If Awarded to: Low Bidder	If Awarded to: Non-Low bidder, Sole or Single Source	Cumulative Change Order Limit (Subject to Rebidding Thresholds, see page 3)
Manager Planning & Environmental Services, Manager Engineering & Maintenance, Policy & Program Development Director Special Projects, Manager Administrative Services, Division Canal Engineer Civil Engineer 5	to \$250,000	to \$100,000	to \$100,000
Deputy Director Engineering & Maintenance, Executive Deputy	to \$500,000*	to \$250,000	to \$250,000
Canal Board	Over \$500,000	Over \$250,000	Over \$250,000
Canal Board Approval is also required when:			
1. The term of a Non-Personal Services, Personal Services or Construction contract exceeds one year, including any extensions or options.			
2. The initial term of less than one year for Non-Personal Services, Personal Services or Construction contracts extends beyond one year.			
3. Cumulative Change Orders exceed \$250,000.			
*Individual Purchase Order Releases (PORs) to approved Value Contracts are "absolute" amounts, to be authorized per the approval limits for "award to low bidder".			

New York State Canal Corporation
 Expenditure Authorization Procedures
 Approval Limits for Signing
 (Includes all Purchase Orders, Contracts and Change Orders)

Contract Management Specialist 1 (SG 18)	to \$5,000
Contract Management Specialist 2 (SG23), Administrative Officer (SG 23)	to \$100,000
Manager Administrative Services (SG 34)	to \$250,000
Executive Deputy (SG 35)	to \$500,000
NYPA VP – Procurement	to \$10,000,000
NYPA VP - Enterprise Shared Services (Real Estate and Fleet Disposal Transactions only)	to \$10,000,000
NYPA SVP - Public & Regulatory Affairs	to \$10,000,000
NYPA President, Chairman or Chief Operating Officer	over \$10,000,000

Notes:

1. All delegations of authority must be in writing.

2a. For "Value Contracts", the Approval Limits for Signing Purchase Order Releases (POR's) are absolute amounts.

2b. For Change Orders to Purchase Orders or Contracts, the Approval Limit for Signature is based on Cumulative Change Order total.

*Source Data for proposed NYS Canal Corporation Expenditure Authorization

- NYPA EAP 1.0 Rev 10
- NY State Canal Corporation P.O. and Contract Approval level Matrix
- Canal Organization design dated 11/21/16

CHANGE ORDER APPROVALS AND REBIDDING THRESHOLDS

1. A) For Contracts with initially approved amounts of **\$100,000 or less**, rebidding will occur when the total cumulative value of Change Orders exceeds \$25,000.

B) **If rebidding is not feasible**, any request to increase funding for such Contracts must be supported by a detailed memorandum explaining the need for additional funding in excess of the \$25,000 threshold. The memorandum shall be approved by the Executive Deputy and forwarded to the NYPA VP - Procurement for review and final approval.
2. A) For Contracts with initially approved amounts **exceeding \$100,000**, rebidding will occur when the total cumulative value of Change Orders exceeds \$250,000.

B) **If rebidding is not feasible**, any request to increase funding for such Contracts must be supported by a detailed memorandum explaining the need for additional funding in excess of \$250,000. The memorandum shall be signed by the Executive Deputy and forwarded to the NYPA VP – Procurement for review, followed by transmittal to the NYPA President, Chairman or Chief Operating Officer for approval, prior to obtaining the Canal Board’s approval.
3. Rebidding should commence as soon as it is recognized that the Contract value will exceed these thresholds, even if the term of the Contract is not complete.
4. Once the approval of such additional funding is received, any subsequent increase in funding requires an additional memorandum for the NYPA President's, Chairman’s or Chief Operating Officer’s approval, until either the Canal Board’s approval is obtained or the Contract is rebid.
5. Typical bases for additional funding in excess of \$250,000 include an "emergency condition" (as defined in the Authority’s Guidelines for Procurement Contracts) which necessitates the additional funding; a situation where it is impractical to rebid (e.g., a construction project where it would not be reasonable to change contractors) or other reasons as provided for in the Procurement Guidelines.
6. Underestimating the scope of a Contract or failure to rebid in a timely fashion are not acceptable reasons for extending a Contract or increasing its value by more than \$250,000.

The term “Contracts” as used in above policy refers to any and all Commitments for the purchase of goods or services made by NYS Canal Corporation.

ACQUISITION AND DISPOSAL OF REAL PROPERTY **January 1– December 31, 2017**

Section 2896 of the Public Authorities Law (PAL) requires a report setting out all real property transactions of the Corporation over a given reporting period. Such report shall consist of a list and full description of all real property disposed of during such period. The report shall contain the price received by the Corporation and the name of the purchaser. There is no monetary threshold, so all disposals regardless of value need to be reported. In addition, acquisitions and leasing transactions are also included in this report. All acquisitions and dispositions reported herein were approved by the Board of Directors/or are consistent with the Corporation's Guidelines for the Disposal of Canal Corporation Real Property and the Guidelines for the Acquisition of Canal Corporation Real Property as adopted by the Board on September 26, 2017.

I. ACQUISITIONS

1.) Acquisitions by Deed or Easement:

Jean P. Pitt Revocable Trust - Acquisition of 0.46 acres in the Town of Fabius, County of Onondaga (Map No. D214181, Parcel No. 6393) in support of the DeRuyter Dam Rehabilitation Project. The consideration for this transaction was \$1,860.00. The warranty deed was recorded on January 19, 2018.

Jeremiah Dennis and Nancy Yeates-Dennis – Acquisition of 1.14 acres in the Town of Fabius, County of Onondaga (Map No. D214181, Parcel No. 6394) in support of the DeRuyter Dam Rehabilitation Project. The consideration for this transaction was \$4,800.00. The warranty deed was recorded on January 19, 2018.

Jason J. Tong- Acquisition of 1.84 acres in the Town of Fabius, County of Onondaga (Map No. D214181, Parcel No. 6395) in support of the DeRuyter Dam Rehabilitation Project. The consideration for this transaction was \$10,000.00. The warranty deed was recorded on January 19, 2018.

II. DISPOSITIONS

1.) Dispositions by Deed or Easement:

Daniel and Judy Shaw – Conveyed via quit claim deed 1.38 acres of canal land located in the Town of Fort Edward, Washington County (Abandonment Map No. 964). This conveyance was approved by the Contracting Officer on March 24, 2016 under a delegation authorized by the Board of Directors pursuant to Resolution No. 561 adopted at Meeting No. 176 held on December 12, 2011. The property for was sold for \$10,000 to cure an encroachment of a dilapidated camp and out-building located thereon. The deed was recorded on June 25, 2017.



Document Title:
**Guidelines and Procedures for the Disposal
of Canal Corporation Real Property**

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Guidelines and Procedures for the Disposal of Canal Corporation Real Property

Note: Revision # should be listed in descending order starting with most recent version at the top

Revision Date(For BCG Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
[Revision Date]	1	Conversion to new Canal document template	All	Allison Renstrom Shea Special Counsel



Document Title:
Guidelines and Procedures for the Disposal
of Canal Corporation Real Property

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1 PURPOSE AND SCOPE

The purpose of these Guidelines for the Disposal of Real Property (“Guidelines”), which comply with Title 5-A, Article 9 of the Public Authorities Law, is to establish the procedures that detail the Canal Corporation’s (“Corporation”) policy and instructions regarding the disposal of real property. In addition, the Guidelines designate a Contracting Officer who is responsible for the Corporation’s compliance with, and enforcement of, the Guidelines.

The powers and duties relating to the New York State canal system, which were transferred to and merged with the Power Authority (“Power Authority”) pursuant to Canal Law Section 5, may be exercised by the Power Authority directly or through the Corporation on behalf of the people of the State of New York.

2 APPLICABILITY

This Policy applies to all New York State Canal Corporation employees who intend to Dispose of Real Property owned by or under the jurisdiction of the New York State Canal Corporation.

3 INITIALISMS (ACRONYMS) AND DEFINITIONS

Contracting Officer - shall mean the officer or employee appointed by resolution of the Corporation’s Trustees to be responsible for compliance with, and enforcement of, the Guidelines for the Disposal of Real Property. The “Contracting Officer” is hereby designated to be the Power Authority Vice President – Enterprise Shared Services, or equivalent(s) or designee.

Corporation – Canal Corporation

Dispose or Disposal - shall mean transfer of title or any other beneficial interest in real property in accordance with these Guidelines. Disposal does not include a release of an easement, Permit or Transfer of Jurisdiction.

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 and under similar circumstances.

OGS – NYS Office of General Services

PAL – Public Authorities Law

Permits - shall mean permits issued by the Corporation that grant revocable privileges to use or access real property or structures under the jurisdiction of the Corporation and for the diversion of Canal waters for sanitary, farm or industrial purposes. Permits are revocable in part to assure availability of the real property for Corporation or public purposes. Permits do not transfer a beneficial interest in real property and may be issued when deemed to be advantageous to the Corporation for the purpose of cutting, gathering and hauling away ice from the canals or when the permitted use does not result in a detriment to canal navigation or damage to the banks or other structures thereof. Permits include Occupancy and Work Permits.

- a) **Occupancy Permit** - a revocable instrument that authorizes the temporary, restricted use of real property under the jurisdiction of the Corporation, including, temporary use of Canal lands or structures, and for the diversion of Canal waters for sanitary, farm or industrial purposes.
- b) **Work Permit** - a revocable instrument that authorizes construction, maintenance, inspection, survey, or other type of work or short term activity on real property under the jurisdiction of the Corporation.

Real Property - shall mean real property, including land, tenements and hereditaments owned by the Corporation, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

Relative - shall mean any person living in the same household as the Corporation employee or any person who is a direct descendant of the Corporation employee's grandparents or the spouse of such descendant.

Transfers of Jurisdiction - shall mean transactions pursuant to Public Lands Law §3(4) and which are between the Corporation and other State governmental entities where jurisdiction over Real Property is transferred and reassigned on such terms and conditions as the Corporation and the New York State Office of General Services deem proper, but the title to the Real Property remains in the name of the People of the State of New York.

4 RESPONSIBILITY

The Board shall adopt by resolution Guidelines for the Disposal of Canal Corporation Real Property regarding the use, awarding, monitoring and reporting of contracts for the disposal of Real Property and which designate a Contracting Officer who is responsible for compliance with and enforcement of, these Guidelines.

5 PROCEDURE IMPLEMENTATION

5.1 COMPLIANCE OVERVIEW

The Public Authorities Law ("PAL") requires the Corporation to establish policy guidelines to accomplish the following:

- 5.1.1 Ensure that the Corporation's contracting activities comply with Title 5-A, Article 9 of the Public Authorities Law, the Corporation's enabling statute, and any other applicable law pertaining to the Disposal of Real Property.
- 5.1.2 Maintain inventory controls and accountability systems for all Real Property under the Corporation's control.
- 5.1.3 Periodically inventory Corporation Real Property to determine which Real Property shall be disposed of.
- 5.1.4 Dispose of Corporation Real Property interests as promptly as possible in accordance with the PAL.
- 5.1.5 Prepare annual reports of Real Property Disposal transactions.

5.2 DISPOSITION OF CORPORATION REAL PROPERTY

- 5.2.1 The Corporation may Dispose of Real Property for not less than the Fair Market Value of such Real Property by sale, exchange, or transfer, for cash, credit or other property, without warranty, and upon such other terms and conditions as the Contracting Officer deems proper under the provisions of the PAL and as implemented by these Guidelines. Fair Market Value of the Corporation Real Property subject to Disposal shall be established by independent appraisal as appropriate and consistent with the intent of the PAL. Such appraisal documents shall be included in the record of the Real Property Disposal transaction.
- 5.2.2 Except as set forth in Sections 5.2.3 and 5.2.4 herein of the Guidelines, any Disposal of Real Property shall only be made after publicly advertising for bids in accordance with the following:
 - a) 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 Real Property; and

- b) all bids shall be publicly disclosed at the time and place stated in the advertisement; and
- c) 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 Corporation, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

5.2.3 The Disposal of Corporation Real Property by Negotiation or Public Auction

- a) The Disposal of Corporation Real Property may be negotiated or made by public auction without regard to Section 5.2.2 but subject to obtaining such competition as is feasible under the circumstances, if:
 - 1. the Fair Market Value of the Real Property does not exceed fifteen thousand dollars (\$15,000.00); or
 - 2. bid prices after advertising therefore are not reasonable, either as to all or some part of the Real Property, or have not been independently arrived at in open competition; or
 - 3. the Disposal will be to the state or any political subdivision, and the estimated Fair Market Value of the Real Property and other satisfactory terms of Disposal are obtained by negotiation; or
 - 4. under those circumstances permitted by Section 5.2.4; or
 - 5. such action is otherwise authorized by law.
- b) The Disposal of Corporation Real Property may also be made by negotiated sale without regard to Section 5.2.2 but subject to obtaining such competition as is feasible under the circumstances, if ALL of the following conditions have been satisfied:
 - 1. the Corporation has determined that: such real property is no longer necessary or useful to the purposes of the Corporation; disposal of such real property complies with all applicable provisions of the canal law; and disposal of such real property is in the best interest of the Corporation; and
 - 2. an appraisal of the fair market value of such property has been made by an independent appraiser and included in the record of the transaction; and
 - 3. the fair market value of such real property is greater than fifteen thousand dollars (\$15,000.00) but not greater than seventy-five thousand dollars (\$75,000.00); and

Guidelines and Procedures for the Disposal of Canal Corporation Real Property

4. such real property was improved prior to April 1, 1992 under a municipal permit or a permit issued pursuant to Section 100 of the Canal Law, thereby creating an encroachment on Corporation Real Property; and
5. the purchaser of such Real Property is, or will be, the owner of the improvement that either fully or partially encroaches on Corporation real property; and
6. the consideration paid for such real property will not be less than the fair market value of the real property exclusive of the value, fair market or otherwise, of the encroaching improvements.

5.2.4 Below Fair Market Value

- a) No Real Property owned, leased or otherwise in the control of the Corporation may be sold, leased, or otherwise alienated for less than its Fair Market Value except if:
 1. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Real Property will remain with the government or any other public entity; or
 2. the purpose of the transfer is within the purpose, mission or governing statute of the Corporation; or
 3. in the event the Corporation seeks to transfer Real Property for less than its Fair Market Value to other than a governmental entity, which Disposal would not be consistent with the Corporation's mission, purpose or governing statutes, the Corporation shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate, or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Corporation may effectuate such transfer.
- b) In the event a below Fair Market Value Real Property transfer is proposed, the following information must be provided to the Corporation's Board of Trustees and the public:
 1. a full description of the Real Property; and
 2. an appraisal of the Fair Market Value of the Real Property and any other information establishing the Fair Market Value sought by the Corporation's Board of Trustees; and

Guidelines and Procedures for the Disposal of Canal Corporation Real Property

3. 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, if any, to the communities in which the Real Property is situated as are required by the transfer; and
 4. a statement of the value to be received compared to the Fair Market Value; and
 5. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
 6. the names of other private parties who have made an offer for such Real Property, the value offered, and the purpose for which the Real Property was sought to be used.
- d) Before approving the Disposal of any Real Property for less than Fair Market Value, the Corporation's Board of Trustees shall consider the information described in Paragraph 5.2.4.b 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.
- 5.2.5 An explanatory statement detailing the Disposal by negotiation of Corporation Real Property subject to the PAL as set forth in Section 5.2.3.a shall be made for any Disposal of:
- a) Real Property with a Fair Market Value in excess of one hundred thousand dollars (\$100,000.00) except that Real Property Disposed of by lease or exchange shall only be subject to Paragraph 5.2.5.b of this Section 5.2.5; or
 - b) Real Property Disposed of by lease if the fair annual rent over the term of the lease is in excess of fifteen thousand dollars (\$15,000.00); or
 - c) Any Real Property or real and related personal property Disposed of by exchange, regardless of value, or any property any part of the consideration is for Real Property.
- 5.2.6 Each explanatory statement prepared in accordance with Section 5.2.5 above shall be transmitted to the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office not less than 90 days in advance of such Disposal, and a copy shall be kept by the Corporation.

- 5.2.7 In the Corporation's discretion, when it shall be deemed advantageous to the Corporation and the State, the Corporation may enter into an agreement with the Office of the Commissioner of the Office of General Services ("OGS") under which OGS may Dispose of the Corporation's Real Property under terms and conditions agreed to by the Corporation and the OGS. In Disposing of any such Real Property of the Corporation, the OGS shall be bound by the relevant provisions of the PAL.
- 5.2.8 No Corporation employee who is involved in the award of Corporation grants or contracts, may ask any purchaser(s), grantor(s), lessor(s) or officer(s), director(s) or employee(s) of such current or prospective purchaser(s), contractor(s) or grantee(s) to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.2.9 No Corporation employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 5.2.8 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- 5.2.10 No Corporation employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% 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. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
- 5.2.11 Public Authority Contracts
- a) Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain Public Authority contracts.
 - b) Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure ("Eligible Contract"), must be reported in advance of execution to the OSC. Upon execution, all such Eligible Contracts must be filed with the OSC within 60 days.
 - c) If the OSC has previously identified a contract or category of contract as "reviewable" ("Reviewable Contract"), such contract must include language stating that it is subject to OSC approval and the executed Reviewable Contract must be submitted

to the OSC for review. If the OSC does not act to disapprove the Reviewable Contract within 90 days, the contract is valid.

5.3 CORPORATION REAL PROPERTY REPORTS

- 5.3.1 The Corporation shall publish the following reports in accordance with these Guidelines:
- a) Pursuant to Section 2800 of the Public Authorities Law, the Corporation shall furnish a report for incorporation in the Corporation's annual report which is distributed to 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 State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Corporation Disposed of during such reporting period and the name of the purchaser of the Real Property and the price paid by the purchaser for the Real Property, and (b) a description of the total amounts of Real Property sold without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property sold is less than Fair Market Value, a detailed explanation of the justification for making the sale without competitive bidding, and a certification by the Power Authority's Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such sale and determined that it complies with applicable law.
 - b) Pursuant to Public Authorities Law § 2896(3), the Corporation shall prepare for distribution to the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office, an annual report listing all real property of the Corporation, which report shall include a list and description of all Real Property Disposed of during the fiscal reporting period. Regarding Disposals, this annual report shall include the price received by the Corporation and the name of the purchaser of the Real Property.
- 5.3.2 The Corporation may be called upon periodically to submit information regarding the Disposal of Real Property to organizations implementing the PAL or other statutes regulating the Disposal of Real Property.
- 5.3.3 The Canal Corporation's Governance Committee meets at least three times per year and Corporation staff may be required to prepare and present ongoing reports regarding the Disposal of Real Property.



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5.4 APPROVAL OF GUIDELINES BY THE AUTHORITY'S BOARD

The Guidelines shall be annually reviewed and approved by the Corporation's Board of Trustees. On or before the thirty-first day of March in each year, the Corporation shall file with the State Comptroller a copy of the most recently reviewed and approved Guidelines, including the name of the Corporation's designated Contracting Officer. At the time of filing such Guidelines with the State Comptroller, the Corporation shall also post such Guidelines on its internet website.

6 VIOLATIONS

Violations of these Guidelines and related policies and procedures by employees may result in disciplinary action up to and including termination. In addition, where the conduct engaged in is illegal, violators may be subject to prosecution under applicable federal, state or local laws.

7 REFERENCES

Canal Law
Public Authorities Law

8 PROCEDURE REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

Revision cycle: Every Year

9 ATTACHMENTS

N/A

Guidelines and Procedures for the Disposal of Canal Corporation Real Property

REDLINE CHANGES

Budget Office not less than 90 days in advance of such Disposal, and a copy shall be kept by the Corporation.

- 5.2.7 In the Corporation's discretion, when it shall be deemed advantageous to the Corporation and the State, the Corporation may enter into an agreement with the Office of the Commissioner of the Office of General Services ("OGS") under which OGS may Dispose of the Corporation's Real Property under terms and conditions agreed to by the Corporation and the OGS. In Disposing of any such Real Property of the Corporation, the OGS shall be bound by the relevant provisions of the PAL.
- 5.2.8 No Corporation employee who is involved in the award of Corporation grants or contracts, may ask any purchaser(s), grantor(s), lessor(s) or officer(s), director(s) or employee(s) of such current or prospective purchaser(s), contractor(s) or grantee(s) to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.2.9 No Corporation employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 5.2.8 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- 5.2.10 No Corporation employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% 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. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
- 5.2.11 Public Authority Contracts
- a) Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain Public Authority contracts.
 - b) Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure ("eEligible eContract"), must be reported in advance of execution to the OSC. Upon execution, all such eEligible eContracts must be filed with the OSC within 60 days.

- c) If the OSC has previously identified a contract or category of contract as “reviewable” (“rReviewable eContract”), such contract must include language stating that it is subject to OSC approval and the executed Reviewable Contract must be submitted to the OSC for review. If the OSC does not act to disapprove the Reviewable eContract within 90 days, the contract is valid.

5.3 CORPORATION REAL PROPERTY REPORTS

- 5.3.1 The Corporation shall publish the following reports in accordance with these Guidelines:
 - a) Pursuant to Section 2800 of the Public Authorities Law, the Corporation shall furnish a report for incorporation in the Corporation’s annual report which is distributed to 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 State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Corporation Disposed of during such reporting period and the name of the purchaser of the Real Property and the price paid by the purchaser for the Real Property, and (b) a description of the total amounts of Real Property sold without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property sold is less than Fair Market Value, a detailed explanation of the justification for making the sale without competitive bidding, and a certification by the Power Authority’s Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such sale and determined that it complies with applicable law.
 - b) Pursuant to Public Authorities Law § 2896(3), the Corporation shall prepare for distribution to the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office, an annual report listing all real property of the Corporation, which report shall include a list and description of all Real Property Disposed of during the fiscal reporting period. Regarding Disposals, this annual report shall include the price received by the Corporation and the name of the purchaser of the Real Property.
- 5.3.2 The Corporation may be called upon periodically to submit information regarding the Disposal of Real Property to organizations implementing the PAL or other statutes regulating the Disposal of Real Property.



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Note: Revision # should be listed in descending order starting with most recent version at the top

Revision Date(For BCG Use Only)	Revision #	Description/Modification	Revision Section (s)	Author
6/6/2017	1	Conversion to new Canal document template	All	Allison Renstrom Shea Special Counsel



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Guidelines and Procedures for the Acquisition of Real Property by the Canal Corporation

1 PURPOSE AND SCOPE

These Guidelines for the Acquisition of Real Property (“Guidelines”), which comply with Title 2, Article 9 of the Public Authorities Law, establish the procedures that detail the Canal Corporation’s (“Corporation”) policy and instructions regarding the acquisition of real property. In addition, the Guidelines designate a contracting officer who is responsible for the Corporation’s compliance with, and enforcement of, the Guidelines.

The powers and duties relating to the New York State canal system, which were transferred to and merged with the Power Authority of the State of New York (“Power Authority”) pursuant to Section 5 of the Canal Law, may be exercised by the Power Authority directly or through the Corporation on behalf of the people of the State of New York.

2 APPLICABILITY

These Guidelines apply to all New York State Canal Corporation employees who intend to Acquire Real Property for the New York State Canal Corporation.

3 INITIALISMS (ACRONYMS) AND DEFINITIONS

Contracting Officer - shall mean the officer or employee appointed by resolution of the Corporation’s Trustees to be responsible for compliance with, and enforcement of, the Guidelines for the acquisition of real property. The “Contracting Officer” is hereby designated to be the Power Authority Vice President - Enterprise Shared Services, or the equivalent(s), or designee.

Corporation – Canal Corporation

Acquisition or Acquire – shall mean to obtain title to or any other beneficial interest in real property in accordance with applicable statutes and these Guidelines.

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 and under similar circumstances.

OSC – Office of the State Comptroller

PAL – Public Authorities Law

PARIS – Public Authorities Reporting System



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Corporation**

Real Property – shall mean real property, including land, tenements and hereditaments owned by the Corporation, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

Relative – is any person living in the same household as the Corporation employee or any person who is a direct descendant of the Corporation employee’s grandparents or the spouse of such descendant, as referred to in Article 5 of these Guidelines.

4 RESPONSIBILITY

The Board shall adopt by resolution Guidelines for the Acquisition of Canal Corporation Real Property and which designate a Contracting Officer who is responsible for compliance with and enforcement of, these Guidelines.

5 PROCEDURE IMPLEMENTATION

5.1 COMPLIANCE OVERVIEW

- 5.1.1 These Guidelines are being adopted consistent with the Public Authorities Law (“PAL”).
- 5.1.2 The Corporation may Acquire Real Property through purchase, eminent domain, state transfers of jurisdiction, lease and by other legal means.
- 5.1.3 The Corporation’s New York statutory authority for land acquisition includes, without limitation, the Canal Law, the Public Authorities Law, the Real Property Law, the Public Lands Law, the Eminent Domain Procedure Law and the Highway Law, as amended.

5.2 DUTIES OF THE CORPORATION

- 5.2.1 The Corporation will maintain adequate inventory controls and accountability systems for all Real Property under the Corporation’s control.
- 5.2.2 Real Property to be Acquired by the Corporation will be in support of existing facilities, operations or in support of new initiatives being pursued by the Corporation.

Guidelines and Procedures for the Acquisition of Real Property by the Canal Corporation

- 5.2.3 The compensation for and the procedure for such Acquisition must be consistent with these Guidelines and the Corporation's Real Estate Expenditure Authorization Procedures as amended.
- 5.2.4 The Corporation will arrange for the transfer or Acquisition of any Real Property identified for Acquisition in accordance with these Guidelines and the Corporation's Real Estate Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.
- 5.2.5 Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain contracts.
- a) Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure ("Eligible Contract"), must be reported in advance of execution to the OSC. Upon execution, all such Eligible Contracts must be filed with the OSC within 60 days.
 - b) If the OSC has previously identified a contract or category of contract as "reviewable" ("Reviewable Contract"), such Reviewable Contract must include language stating that it is subject to OSC approval and the executed Reviewable Contract must be submitted to the OSC for review. If the OSC does not act to disapprove the Reviewable Contract within 90 days, the contract is valid.

5.3 ETHICAL CONSIDERATIONS

- 5.3.1 No Corporation employee who is involved in the Acquisition of Real Property, may ask any purchaser, grantor, lessor or officers, directors or employees of such current or prospective purchaser, grantor or lessor to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.3.2 No Corporation employee may take part in any Acquisition decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% 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. If such situation arises, the

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employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

5.4 ACQUISITION REPORTS BY THE CORPORATION

5.4.1 The Corporation shall publish the following reports in accordance with these Guidelines:

- a) Pursuant to Section 2800 of the Public Authorities Law, the Corporation shall furnish a report for incorporation in the Corporation's annual report which is distributed to 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 State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Corporation Acquired during such reporting period and the name of the seller of the Real Property and the price paid by the Corporation for the Real Property, and (b) a description of the total amounts of Real Property purchased without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property purchased exceeds Fair Market Value, a detailed explanation of the justification for making the purchase without competitive bidding, and a certification by the Power Authority's Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such purchase and determined that it complies with applicable law.
- b) The Corporation may be called upon periodically to submit information regarding the Acquisition of Real Property to organizations implementing the PAL or other statutes regulating the Acquisition of Real Property, such as the Authority Budget Office through the Public Authorities Reporting System ("PARIS").
- c) The Corporation's Governance Committee meets at least three times per year and Corporation staff may be required to prepare and present ongoing reports regarding the Acquisition of Real Property.

6 VIOLATIONS

Violations of these Guidelines and related policies and procedures by employees may result in disciplinary action up to and including termination. In addition, where the conduct engaged in is illegal, violators may be subject to prosecution under applicable federal, state or local laws.

7 REFERENCES

Public Authorities Law



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8 PROCEDURE REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

Revision cycle: Every Year

9 ATTACHMENTS

N/A

Guidelines and Procedures for the Acquisition of Canal Corporation Real Property

REDLINE CHANGES

- 5.2.3 The compensation for and the procedure for such Acquisition must be consistent with these Guidelines and the Corporation's Real Estate Expenditure Authorization Procedures as amended.
- 5.2.4 The Corporation will arrange for the transfer or Acquisition of any Real Property identified for Acquisition in accordance with these Guidelines and the Corporation's Real Estate Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.
- 5.2.5 Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain contracts.
- a) Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure ("eEligible eContract"), must be reported in advance of execution to the OSC. Upon execution, all such eEligible eContracts must be filed with the OSC within 60 days.
 - b) If the OSC has previously identified a contract or category of contract as "reviewable" ("Reviewable eContract"), such Reviewable eContract must include language stating that it is subject to OSC approval and the executed Reviewable eContract must be submitted to the OSC for review. If the OSC does not act to disapprove the Reviewable eContract within 90 days, the contract is valid.

5.3 ETHICAL CONSIDERATIONS

- 5.3.1 No Corporation employee who is involved in the Acquisition of Real Property, may ask any purchaser, grantor, lessor or officers, directors or employees of such current or prospective purchaser, grantor or lessor to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.3.2 No Corporation employee may take part in any Acquisition decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% 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. If such situation arises, the

Summary Results of 2017 Confidential Evaluation of NYPA/Canal Board Performance

Criteria	Agree	Somewhat Agree	Somewhat Disagree	Disagree
1. Board members have a shared understanding of the mission and purpose of:				
a. the Authority.	7			
b. Canal Corporation.	6	1		
2. The policies, practices and decisions of the Board are always consistent with the mission and purpose of:				
a. the Authority.	6	1		
b. Canal Corporation.	6	1		
3. Board members comprehend their role and fiduciary responsibilities and hold themselves and each other to these principles.	7			
4. The Board adopts and reviews annually policies, by-laws, and practices for the effective governance, management and operations of:				
a. the Authority.	7			
b. Canal Corporation.	7			
5. The Board sets clear and measurable performance goals that contribute to accomplishing its mission for the Authority:				
a. the Authority.	6	1		
b. Canal Corporation.	4	3		
6. The decisions made by Board members are arrived at through independent judgment and deliberation, free of political influence, pressure or self-interest.	5	2		
7. Individual Board members communicate effectively with executive staff so as to be well informed on the status of all important issues.	7			
8. Board members are knowledgeable about the programs, financial statements, reporting requirements, and other transactions of:				
a. the Authority.	3	4		
b. Canal Corporation.	2	5		
9. The Board meets to review and approve, where required by law, all documents and reports prior to public release and is confident that the information being presented is accurate and complete on behalf of:				
a. the Authority.	6	1		
b. Canal Corporation.	6	1		
10. The Board knows the statutory obligations and compliance status with laws applicable to:				
a. the Authority.	6	1		
b. Canal Corporation.	6	1		
11. Board and committee meetings facilitate open, deliberate and thorough discussion, and the active participation of members.	7			
12. Board members have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken.	5	2		
13. Individual Board members feel empowered to delay votes, defer agenda items, or table actions if they feel additional information or discussion is required.	6	1		
14. The Board exercises appropriate oversight of the CEO and other executive staff, including setting performance expectations and reviewing performance annually.	6	1		
15. The Board has identified the areas of most risk and works to implement risk mitigation strategies before problems occur with management of:				
a. the Authority.	7			
b. Canal Corporation	5	2		
16. Board members demonstrate leadership and vision and work respectfully with each other.	6	1		

Date Completed: 3/9/18

CANALS PROCUREMENT CONTRACTS SUMMARY **January - December 2017**

In accordance with the Procurement Guidelines, “procurement contracts” are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Canal Corporation facilities including operations and maintenance and capital projects, including but not limited to, goods and commodities, construction, maintenance work and other services.

The following summary of all procurement contracts includes specific details for procurements with a value of \$5,000 or greater that were open, completed or awarded in 2017, including contracts that were extended into 2018 or beyond. There were 394 such Canal Corporation contracts with an estimated value of more than \$218 million, with total procurement expenditures in 2017 exceeding \$28 million.

The following is a breakdown of the total value of active contracts:

- 61% Construction Services;
- 6% Equipment and Commodities;
- 1% Architectural and Engineering Services and Legal Services
- 19% Personal Service contracts such as professional consulting services;
- 13% Non-Personal Service contracts such as maintenance, technicians, and contingent workforce

Of the total value of contracts reported (\$218 million), approximately 99% were competitively bid. In 2017, approximately 1% of contracts were sole/single-source awards. The sole/single-source awards included, but were not limited to, the purchase of spare parts and services from original equipment manufacturers, procurements from proprietary sources, procurements required on an emergency basis and New York State Thruway support agreements of which only one remains open.

The Canal Corporation had no disposals of personal property valued or estimated in the amount of \$5,000 or greater during the year 2017. The Canal Corporation had no fossil fuel or corporate finance activity related specifically to its operations. Additionally, for other matters, such as Supplier Diversity Program and Inventory Statistical reporting and the transfer of interest in personal property from NYPA to Canal Corporation, the values have been included in the attached NYPA reports.