

# **Agriculture and NYS Horse Breeding Development Fund**

Approved by Trustees on 12/04/08

## **GUIDELINES FOR PROCUREMENT CONTRACTS**

### **1. TITLE**

The following comprehensive guidelines, which detail the operative policy and instructions of the Agriculture and NYS Horse Breeding Development Fund (the "Fund") regarding the use, awarding, monitoring and reporting of procurement contracts, shall be known as "Guidelines for Procurement Contracts." They shall be referred to herein as the "Guidelines."

### **2. DISCRETIONARY PURCHASES**

Purchases from Preferred Sources, OGS Centralized Contracts and agency contracts, by law, take precedence over discretionary procurement options. Pursuant to Section 163 of the New York State Finance Law, State agencies shall have discretion when purchasing goods or services up to an aggregate amount of \$50,000 in a twelve (12) month period. When purchasing from a Preferred Source as defined below, the discretionary limitation shall be \$100,000. All purchases that exceed the aforementioned monetary limits shall require the approval of the Office of the State Comptroller ("OSC").

### **3. DEFINITIONS**

#### **A. Procurement Contract**

Any written agreement for the acquisition of goods or services of any kind.

#### **B. Contract for Goods and Services**

Any written agreement to provide goods or a service (other than those hereinafter defined as **personal services**) pertaining to building operation and maintenance, office equipment and supplies, printing, promotional materials, or any other similar item or items.

#### **C. Contract for Personal Services**

Any written agreement to provide a service, including but not limited to legal, accounting, management consulting, investing, banking, planning, training, statistical, research, public relations, architectural, engineering, surveying, performance (of an artistic or entertainment nature), or personal service of a consulting, professional, or technical nature, for a fee, commission, or other compensation, by a person or persons not providing such services as an officer or employee of a state agency or public benefit corporation.

**D. Preferred Source**

A preferred source is a minority owned business, a woman owned business, a New York State small business or a business that deals in recycled or remanufactured goods.

**a) Minority Business Enterprise**

Any business enterprise, including a sole proprietorship, partnership or corporation that is:

- i. An enterprise in which at least 51% of the ownership is controlled by one or more minority group member or, in the case of a publicly-owned business, at least 51% of the common stock or other voting interests of which is owned by one or more minority group members;
- ii. An enterprise in which the minority ownership is real, substantial, and continuing;
- iii. An enterprise in which the minority ownership has and exercises the authority independently to control the day-to-day business decisions of the enterprise; and
- iv. An enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its fields.
- v. For the purpose of these Guidelines, a minority group member means a United States citizen or permanent resident alien who can demonstrate membership in one following groups:
  - aa. Black persons having origins in any of the Black African racial groups not of Hispanic origin;
  - bb. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic Origin, regardless of race;
  - cc. Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Island; or
  - dd. Native American persons having origins in any of the original peoples of North America.

**b) Women-owned Business Enterprise**

For the purposes of these Guidelines, a women-owned business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation which is:

- i. At least 51% owned by one or more United States citizens or permanent resident aliens who are women or, in the case of a publicly-owned business, at least 51% of the common stock or other voting interests of which is owned by a United States citizen or permanent resident alien or aliens who are women;
- ii. An enterprise in which the ownership interest of women is real, substantial, and continuing;
- iii. An enterprise in which the women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; and
- iv. An enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.

**c) New York State Small Business**

For the purposes of these Guidelines, "small business concern" or "small business" means a business which is resident in this State, independently owned and operated, not dominant in its field and employs one hundred or less persons.

**d) Enterprise That Deals In Recycled or Remanufactured Goods or Technology****e) Aggregate Purchases**

The Fund shall consider the reasonably expected aggregate amount of all purchases of the same commodities or services to be made within a twelve (12) month period commencing on the date of purchase when determining which procurement methodology to use. Aggregate purchases of the same commodities or services within a twelve (12) month period are deemed a single transaction.

When the Fund can reasonably anticipate that repeat purchases are necessary, the Fund should select the appropriate procurement process to cover such aggregate needs, which may include a competitive bid. Purchases of Services or Commodities shall not be artificially divided for

the purpose of satisfying the discretionary buying thresholds. A change to or renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount for all purchases of the same commodity or services from the same provider within the twelve month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount.

#### **4. DISCRETIONARY GUIDELINES**

For purchases up to the Discretionary Buying Threshold, the Fund must:

- i) ensure that the commodities and services acquired meet its form, function and utility needs;
- ii) document and justify the selection of the vendor;
- iii) document and justify the reasonableness of the price; and
- iv) ensure that the State buys from responsible vendors.

NOTE: Discretionary purchases of \$15,000 or over must be advertised in the Contract Reporter (Economic Development Law § 141(3)). Quarterly Contract Reporter ads are required for purchases between \$5,000 and \$15,000 as further explained below.

#### **5. INTENT**

It is the intent of the Fund, to the fullest extent that it is practical, and except as otherwise provided for herein, that the award of procurement contracts be made on a competitive basis, to the lowest responsible bidder meeting specifications.

#### **6. APPLICATION OF DISCRETIONARY GUIDELINES**

- A. In anticipation of entering into a Contract for goods or services, the Fund shall;
  - i. review the List of Preferred Source Offerings and determine if the desired commodity or service is available from a Preferred Source in the form, function and utility that meets its needs;
  - ii. review OGS Centralized Commodities Contracts.
  - iii. review its own Fund specific contracts to determine if the desired commodity or service is available to meet the Fund's need.
- B. If the above reviews do not meet the Fund's needs, the following steps in

accordance with purchase price may apply:

\*NOTE: If an OGS Centralized Services Contract is available and will meet the Fund's needs, the Fund may consider use of such contract, although it is not required.

- i. Purchases Under \$15,000: The Fund shall maintain justification to support both the vendor selection and the reasonableness of the price. Methods for determining reasonableness of price include, but are not limited to:
  - a. Informal quotes (e.g., telephone or written),
  - b. Cost to other governmental entities,
  - c. Historical cost or price comparisons, or
  - d. OGS or Less, where applicable.

The Fund shall document in the Procurement Record the basis for the conclusion that the price is reasonable, with "Reasonable" meaning a "fair market price" based on normal competitive conditions and not necessarily the lowest possible price.

The Fund shall advertise in the Contract Reporter on a quarterly basis for anticipated purchases between \$5,000 and \$15,000 and shall consider vendors responding to advertisements in the Quarterly Listings.

- ii. Purchases from \$15,000 to \$50,000: In addition to the above, Contract Reporter advertisement documentation is required.
- iii. Purchases from \$50,000.01 to \$100,000: This range applies to procurements from New York State Small Businesses, New York State certified Minority and/or Women Owned Enterprises or for commodities and technology that are recycled or remanufactured. To identify certified M/WBEs, the Fund consults the Department of Economic Development's directory of certified minority and women-owned business enterprises.
- iv. As applicable, the Fund shall obtain vendor certification that the commodity or technology is recycled or remanufactured or that a small business meets the appropriate criteria.

## 7. **RESPONSIBILITY FOR PROCUREMENT CONTRACTS**

The Executive Director of the Fund, or his duly-appointed designee, has the overall day-to-day responsibility and oversight regarding the awarding and monitoring of

procurement contracts. Personal service contractors shall be utilized in those areas where the Fund determines that such services may not be reasonably obtained by staff members of the Fund. In making such determination, factors such as timing, costs, qualifications, or the nature of the services to be rendered shall be taken into consideration.

**8. FUND REQUIREMENTS REGARDING SELECTION OF PROCUREMENT CONTRACTORS**

**A. Personal Service**

- i. The selection of personal service contractors shall be on a competitive basis, except that the Executive Director may waive competition if none is available or the interests of the Fund so require. Factors to be considered in the decision not to seek competition include, but are not limited to:
  - a. specialized expertise or unusual qualifications, or services obtainable from one source only;
  - b. historical relationship with the Fund, the continuation of which is in the best interests of the Fund;
  - c. specialized knowledge;
  - d. geographical proximity to the Fund;
  - e. lack of responsible competition, in the sole opinion of the Fund, to perform the desired services;
  - f. nature, magnitude or complexity of services required; and
  - g. short-term or infrequent need for services.
- ii. Any contract involving services to be rendered over a period in excess of one year shall require the approval of the Board by resolution, and an annual review of the contract by the Board.
- iii. A personal services contract shall also require the approval of the Board by resolution when the amount thereof exceeds \$25,000.
- iv. Legal services need not be awarded on a competitive basis.

**B. Goods and Other Services**

- i. Selection of contractors for goods and services other than personal services shall be made only on a competitive basis, selecting the lowest responsible bid meeting specifications, except as may otherwise be set forth herein. The level of competition and authorization shall depend upon the

estimated or actual value of the goods or services, subject to Article 2, above, as follows:

	Estimated or Actual Value	Required Level of Competition	Authorization Level Required
I	Up to \$15,000	Not Required*	Exec. Director
II	\$15,000 - \$50,000	3 written quotes**	Exec. Director
III	\$50,000 and up	Sealed Bids	Board Resolution

\* Formal documentation is not required. However, it is expected that all staff members will attempt to utilize a preferred source wherever possible, and also be cost-conscious.

\*\* Written quotes must be documented as to the vendor/supplier, service/item required, and date.

Notes: As stated above, should the contract price ó with the contract price being the reasonably expected aggregate amount of all purchases of the same commodities or services to be made within a twelve (12) month period commencing on the date of purchase when determining which procurement methodology to use ó exceed \$50,000 or \$100,000 if dealing with a preferred source, the procurement contract must have prior approval from the Office of the State Comptroller (OSC). For the purpose of this guideline, aggregate purchases of the same commodities or services within a twelve (12) month period are deemed a single transaction.

Purchases up to the Discretionary Buying Threshold are not subject to the formal competitive bidding requirements set forth in State Finance Law §163, but are subject to the advertising requirements set forth in Economic Development Law Article 4-C. The Fund must, however, comply with its internal policies and procedures governing discretionary purchases, which should include an assessment as to whether a formal competitive procurement process, or one that is less formal but still competitive, may best meet the Fund's needs.

ii. Competition may be waived:

a. On an emergency basis when the safety of life or property is a involved. A written explanation of the nature of the emergency must

accompany the purchase order/contract;

b. When only one source is available. A written statement must accompany the purchase order/contract, explaining the need for sole-source acquisition;

c. When state OGS contracts are used; and

d. Under a warranty, when the Fund may be required to obtain services from a manufacturer-designated entity.

iii. The level of approval required for such waivers of competition as set forth in subsections ii(a) and (b) herein shall be the Executive Director within levels I-II, and Board for Level III.

iv. Any contract for goods or services other than personal services awarded for a period in excess of one year shall require the approval of the Board by resolution, and an annual review of the contract by the Board.

9. **PROCEDURES FOR COMPETITIVE SELECTION - PERSONAL SERVICES**

The procedures for competitive selection of personal service contractors, when such method of selection is considered to be in the best interest of the Fund, are as follows:

- A. The Fund shall prepare a written statement containing a description of the services, the reasons why they are required, and the required estimated schedule or duration of the services.
- B. A request for proposals (ōRFPö) shall, whenever practicable and desirable, be sent to at least five firms to assure competition, including any WBE/MBE firms, unless there are less than five qualified firms or unless competition is waived as provided in the Guidelines.
- C. The RFP shall describe the services to be performed, any completion dates or time requirements, MBE requirements, if applicable, and the criteria to be utilized by the Fund in evaluating proposals, and shall contain a requirement for a cost proposal, and the date, time and place when proposals must be received. In cases of sealed bids, the bids should be opened at a designated time and place, and witnessed by at least three persons. Preferably, the witnesses should include two staff members and a Board member or representative.
- D. The Fund may select one or more proposers with which to negotiate after evaluation of the proposals received. The award shall be made to the proposer or proposers whose proposal (s) will be the most advantageous to the Fund - price,

qualifications, and other factors considered - using such evaluation criteria as the basis for the decision.

- E. For Architectural, Engineering, and Technical Contracts.
- i. In the Procurement of such architectural, engineering, and technical services, the Fund shall evaluate current statements of qualifications and performance data. If desired, the Fund may conduct discussions with three or more professional firms regarding anticipated design concepts and proposed methods or approach to the assignment.
  - ii. The Fund shall then comply with the provisions of sub-paragraphs A, B, and C of this Article 9 of these Guidelines.
  - iii. The Fund shall negotiate a contract with the highest qualified professional firm for architectural, engineering, and/or technical services at compensation which the Fund determines in writing to be fair and reasonable. In making this decision, the Fund shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof. Should the Fund be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee it determines to be fair and reasonable, negotiations with the professional firm shall formally be terminated. The Fund shall then undertake negotiations with the second most qualified professional firm. Failing accord with the second most qualified professional firm - should the Fund be unable to negotiate a satisfactory contract with any of the selected professional firms in order of their competence and qualification, it shall continue negotiations in accordance with this subparagraph until an agreement is reached.
  - iv. The provisions of this subparagraph shall apply only to engineering and/or technical services and/or architectural service contracts in excess of \$25,000.
  - v. Contracts for engineering, technical or architectural services involving lesser amounts may be entered into pursuant to the provisions of this section, or any applicable provisions of the Guidelines.

## 10. ADVERTISING REQUIREMENTS

In anticipation of entering into a Procurement Contract, the Fund must advertise in the

Contract Reporter and should utilize language which substantially conforms to the proposed narratives contained in Schedule A, annexed hereto. The Fund must advertise:

- A. For the anticipated purchase of goods in the aggregate amount of \$15,000;
- B. For the anticipated purchase of services in the aggregate amount of \$15,000;  
and
- C. Quarterly for the anticipated purchase of goods or services in an aggregate amount between \$5,000 and \$15,000.

**11. PROVISIONS TO BE CONTAINED IN ALL PROCUREMENT CONTRACTS**

A. Procurement contracts shall set forth the nature, quantity, if applicable, and monitoring of work performed, the use of Fund supplies and facilities, the use of Fund personnel, and provisions considered to be in the best interest of the Fund. Procurement contracts shall be awarded only to persons or firms deemed responsive to the Fund's procurement documents as well as capable and responsible. The following types of provisions shall be contained in all procurement contracts, except that any provision listed which is inapplicable or unnecessary because of the nature or duration of the services or goods to be delivered, the location or locations where they are to be performed, or the type of compensation being paid therefore, need not be included.

Any of the following terms, deemed applicable, may be added.

- i. Description of services;
- ii. Compensation;
- iii. Time for performance or date of completion;
- iv. Liability of contractor or consultant;
- v. Indemnification of the Fund;
- vi. Reports of contractor or consultant;
- vii. Ownership of plans, drawings, or other products of the performance of the services (professional services);
- viii. No assignments or subcontracts without the express written consent of the Fund;
- ix. Maintenance of records, accounts;
- x. Right of Fund to inspect and/or audit books and records of contractor or consultant (professional services);
- xi. Insurance requirements;
- xii. Termination;

- xiii. Monitoring of the performance of service;
  - xiv. Use of Fund supplies, facilities or property;
  - xv. Use of Fund personnel;
  - xvi. All provisions required to be included in Fund contracts by federal, state or local laws, ordinances, codes, rules regulations; and
  - xvii. Involvement of former officers or employees.
- B. Contractors shall have the following responsibilities:
- i. To perform the contract in accordance with its terms;
  - ii. To perform services required under a contract competently, efficiently, in a timely and first-class manner, at a reasonable cost and in a manner acceptable to the Fund, or to deliver goods or supplies in a first-class condition, to the proper location, on a timely basis, and in a manner which is acceptable to the Fund; and
  - iii. To cooperate with Fund personnel who are directing, monitoring, or supervising the delivery of services or goods, or who are assisting in the delivery thereof.

**12. INVOLVEMENT OF FORMER OFFICERS OR EMPLOYEES**

No procurement contracts shall be entered into with current and/or former officers or employees of the Fund except by a resolution adopted by the Board, upon showing that such contract is in the best interest of the Fund, and then only to the extent permitted by Section 73 of the Public Officers Law and other applicable provisions of law.

**13. ANNUAL REPORT ON PROCUREMENT CONTRACTS**

- A. The Fund shall annually prepare and approve a report on procurement contracts, which shall include the Guidelines, an explanation of the Guidelines, and any amendments thereto since the last annual report. Such report on procurement contracts shall also include a list of all new contracts, contract selection process, and status of all existing procurement contracts. For the purposes of this report, only procurement contracts in the actual or estimated amount of \$15,000 need be included.
- B. Such a report shall be available to be the submitted annually as per current requirements.

- C. Copies of the Annual Report are to be made available to the public upon reasonable request therefore.

**14. THIRD-PARTY RIGHTS; VALIDITY OF CONTRACTS**

- A. These Guidelines are intended for the guidance of the officers and employees of the Fund only, and nothing contained herein is intended or shall be construed to confer upon any person, firm, or corporation any right, remedy, claim or benefit under or by reason of any requirement of provision hereof.
- B. Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of the Guidelines.

**15. MISCELLANEOUS**

- A. Where applicable federal, state or local laws, ordinances, codes, rules or regulations containing requirements which are in conflict with or impose greater obligations upon the Fund than these Guidelines, then such requirements shall take precedence over those contained herein.
- B. Any specific provision of the Guidelines may be waived by the Chairman or Executive Director of the Fund, but only under extraordinary circumstances. Any waivers of the Guidelines herein due to the extraordinary circumstances shall be reported to the Fund no later than the first monthly meeting following the waiver to allow the Board to certify that extraordinary circumstances are present and necessary.
- C. The Fund shall not be precluded from adopting additional requirements relating to the matters covered by these Guidelines.

**16. PRODUCTS AND SERVICES OF THE THE BLIND AND DISABLED**

The Fund shall procure available goods and services from the blind and the disabled, in accordance with the provisions of Section 175-a and 175-b of the State Finance law.

**17. EFFECTIVE DATE**

These Guidelines shall be effective until further notice.

Dated: December 4, 2008

Albany, New York

**SCHEDULE A****Contract Reporter Notification Language**

Justification of reasonableness of price must be included in the procurement record.

**Alternative I**

The Fund intends to purchase (insert project description, i.e., 1,000 widgets) pursuant to its discretionary purchasing authority under State Finance Law section 163(6), which authorizes purchases without a formal competitive process in certain circumstances, including purchases from New York State small businesses, from businesses certified pursuant to Article 15-A of the New York State Executive Law and, if applicable, from businesses selling commodities or technology that are recycled or remanufactured. Interested parties should contact (Fund designated contact/purchasing officer) to discuss this opportunity.

**Alternative II**

The Fund intends to purchase (insert project description, i.e., 1,000 widgets), pursuant to its discretionary purchasing authority under State Finance Law section 163(6). Interested parties should contact (Fund designated contact/purchasing officer) for more details about this opportunity.

**Alternative III**

The Fund intends to procure (insert project description, i.e., 1,000 widgets) pursuant to its discretionary purchasing authority under State Finance Law section 163(6). This procurement opportunity is limited to New York State small businesses, businesses certified pursuant to Article 15-A of the New York State Executive Law and, if applicable, businesses selling commodities or technology that are recycled or remanufactured.