CITY UNIVERSITY CONSTRUCTION FUND GUIDELINES FOR PROCUREMENT
CONTRACTS
(as amended through October 14, 2008 )

Section A. Introduction

These Guidelines set forth the operative policy and instructions of the City University Construction Fund (the "Fund") regarding the use, award, monitoring, and reporting of Procurement Contracts in the actual or estimated amount of $5,000 or more.

These Guidelines are intended to satisfy the requirements of Section 2879 of the New York State Public Authorities Law and to provide an internal and administrative policy for the Fund's trustees, officers and employees. These Guidelines do not provide third parties with any rights or remedies.

Section B. Definitions

1. “Construction Management/Build (CM/Build) Contract” means a Procurement Contract pursuant to which the Fund hires a construction management firm to manage the overall construction project and to bid and hold each underlying contract for materials, labor and services related to the construction of the project. The Fund may employ a CM/Build Contract only when the estimated cost of construction is $3 million or more.

2. “Executive Director” means the Executive Director of the CUNY Construction Fund.

3. “Fund” means the CUNY Construction Fund acting through its Board of Trustees or pursuant to a delegation of powers or duties to one or more of its trustees, officers, agents or employees as may be permitted by Section 6274 of the New York State Education Law.

4. “Job Order Contract” (JOC) means a Procurement Contract resulting from a competitive bid process for an indefinite quantity of construction materials and services, which are specified in a Fund-approved catalog by type and unit price, for the Fund to use on specified projects to repair, maintain and upgrade CUNY facilities; the lowest responsible bidder shall bid the lowest ‘adjustment factor’ by which the Fund will multiply the fixed unit prices established by the catalog; the contract amount shall be the product of the ‘adjustment factor’ times the catalog prices for the materials and services that the Fund identifies for use on all of each individual project covered by the contract documents.


6. Procurement Contract" means any written agreement for the acquisition of goods, services (including but not limited to professional services) or interests in real property of any kind or for construction, or any combination of these. The term does not include any agreement for employment in the civil services or by the Research Foundation of the City University of New York. “Procurement Contractors” means any counter-party to a
Section C. **Selection of Procurement Contractors and Award and Board Review of Procurement Contracts**

1. **Selection Policy**
   
   Consistent with these Guidelines, the Fund shall select Procurement Contractors in a manner that (a) is fair and efficient, (b) seeks high quality goods, services, and/or construction at reasonable prices, and (c) satisfies state law in providing an opportunity for Minority Business Enterprises and Women-Owned Enterprises to compete for Procurement Contracts so as to facilitate the awarding of a fair share of such contracts to such enterprises.

2. **Selection Mechanisms**

   The Fund shall use the following mechanisms to select Procurement Contractors for specified goods, services, interests in real estate and/or construction:

   (a) **Competitive Bids.** The Fund may solicit fixed-price bids and may award the Procurement Contract to a responsible bidder primarily on the basis of the lowest price.

   (b) **Request for Proposals.** The Fund may solicit specific proposals and award the Procurement Contract on the basis of an evaluation of the characteristics, quality and cost of such proposals, as set forth in the form of solicitation, including, without limitation, proffered security where security is requested or appropriate.

   (c) **Negotiated Procurement.** The Fund may negotiate the terms of a Procurement Contract under the circumstances and subject to the conditions set forth below. Negotiations may be preceded by preliminary discussions to explore the feasibility of the procurement. A Negotiated Procurement may be used in combination with a Request for Proposals.

      (i) In the case of a Procurement Contract for goods, services and/or construction, the Fund may negotiate with at least three vendors (or, in compelling circumstances, with fewer vendors) and award a Procurement Contract on terms that serve the best interests of the Fund where it is not practical and/or advantageous to make an award by Competitive Bids or Request for Proposals because (A) the constraints of a time-sensitive require a prompt selection and award, such the need to comply with a court order, to secure funding or avoid the loss of funding or to cure the default or unavailability of an existing contractor; (B) there is a limited number of vendors available and able to perform the work; (C) an existing contract needs to be extended beyond the contractually stipulated term and extensions; and (D) there is a compelling need to use an existing contractor to perform additional work or a later phase of a project.

      (ii) In the case of a contract for the acquisition of an interest in or the development of real property, the Fund may negotiate with one or more
vendors and award a Procurement Contract in the best interests of the Fund.

(d) **Single Source.** When the Executive Director determines that there is only a single responsible source for any goods, services, interests in real estate and/or construction required by the Fund, the Fund may award a Procurement Contract without competitive procedures. A record setting forth the circumstances under which any such contract was let shall be provided in the annual report of the Fund prepared for the year in which the contract is let.

(e) **Emergency.** In the event of an emergency involving danger to life or property or other unforeseen occurrences requiring immediate action that cannot await the completion of other procurement mechanisms, the Executive Director may award a Procurement Contract without competitive procedures. For any such Procurement Contract involving an actual or estimated expense of $10,000 or more, the Executive Director shall, prior to executing the contract, notify four Trustees of the Fund of the nature and circumstances of the emergency and obtain their approval as to the aware. The Executive Director shall present a report of the award of such an emergency contract as an information item at the next regularly scheduled meeting of the Board of Trustees. A record setting forth the circumstances under which any such emergency contract was awarded shall be provided in the annual report of the Fund prepared for the year in which the contract is awarded.

(f) **Contracts Procured by Government Entities.** The Fund may award a Procurement Contract through existing contracts awarded by government entities, i.e., the State of New York, including any authority or public benefit corporation of the State of New York, the City of New York, including the Department of Education, or the Federal Government, provided that the Procurement Contract contains material terms, including price, that are substantially the same as or more favorable than the material terms of the contract with the government entity.

(g) **Procurement Cards (P-Cards).** The Executive Director shall be permitted to utilize Procurement Cards, a flexible, convenient and efficient means of processing payments for one-time and recurring monthly purchases, for payment of reasonable out-of-pocket expenses incurred in the performance of the duties of that office, such as subscriptions, parking lot fees, E-Z Pass tolls and telecommunication charges.

(h) **Other Mechanisms Approved by the Fund's Board.** The Fund may use any other procurement mechanism the Board of Trustees shall deem appropriate.

3. **Advertisement Requirements for Competitive Selection Mechanisms**

The solicitation of bids, proposals or submissions for a Procurement Contract shall be made by the Fund in a manner determined by the Executive Director to be the most cost-effective for providing reasonable competition for the Fund's procurement contracts. This may include advertisement in appropriate newspapers or trade journals, direct mailings and such other outreach mechanisms as are consistent with the policy of these Guidelines with respect to firms considered by the Executive Director to be qualified, including, without
(a) **Procurement Opportunities Newsletter.** The Executive Director may solicit bids or proposals by placing a listing in the New York State Contract Reporter, or any other official listing of bidding opportunities established under Article 4-C of the Economic Development Law or comparable statutes. Any such listing shall be made in conformity with the rules and requirements established by the responsible agency, such as New York State Department of Economic Development, Division for Small Business, that are in effect at the time the listing is to be made.

(b) **General Contents of Solicitations.** Except as otherwise required (for example, by the applicable rules of the Department of Economic Development referred to in item (a) above), each solicitation by the Fund shall include: (i) the name of the Fund, (ii) a description of the goods, services, and/or construction sought, the location where goods are to be delivered or services and/or construction are to be provided and the contract term, (iii) the address where bids or proposals are to be submitted, (iv) the date when such bids or proposals are due, (v) a description of any eligibility requirement or preference and (vi) any other information that the Executive Director deems useful.

(c) **Antidiscrimination Language in Fund Solicitations.** All solicitations of bids or proposals for any procurement contract shall contain or make reference to the following:

(i) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members (as herein defined), including, without limitation, women, are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignments, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retaining, including apprenticeship and on-the-job training;

(ii) At the request of the Fund, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the authority to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder;

(iii) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance
of the contract with the Fund, that will qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status; and

(iv) The contractor will include the provisions of subdivisions (i) through (iii) of this section in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the Fund.

(d) **Procurement Contracts for $25,000 or More.** If the actual or estimated cost of a Procurement Contract is twenty-five thousand dollars ($25,000) or more, any solicitation shall be published once in the State Register, published by the Department of State and at least once in a newspaper of general circulation.

(e) **Timing.** At least fifteen business days shall elapse between the first solicitation of bids, proposals or submissions or the first publication of any advertisement for bids, proposals or submissions and the due date for the submission of bids, proposals or submissions.

4. **Award of Procurement Contracts**

(a) **Minimum Solicitation.** Except as otherwise provided in these Guidelines, the Executive Director shall solicit bids, proposals or submissions from at least three (3) contractors that are qualified to provide the goods, services, interests in real estate and/or construction sought by the Fund and have agreed to consent to the nondiscrimination and compliance provisions required by Section E of these Guidelines. Subject to subsections (b) and (c) hereof, the Fund shall award the Procurement Contract on the basis of the most favorable combination of criteria applicable respectively to goods, services, interests in real estate or construction, such as quality, ability to deliver or perform in a timely manner, price or fee structure, location, technical qualifications, financial stability, past performance, staff availability and experience.

(b) **Contracts for $10,000 or More.** No Procurement Contract involving an actual or estimated expense of ten thousand dollars ($10,000) or more shall be awarded by the Fund unless, prior to execution of the contract by the Fund, no fewer than four (4) trustees of the Fund approve the contract.

(c) **Contracts for $25,000 or More.** Each Procurement Contract for supplies, materials or equipment involving an estimated expense of twenty-five thousand dollars ($25,000) or more shall be awarded to the lowest responsible bidder furnishing required security, if security is to be required, after obtaining competitive bids, proposals or submissions for such contract in the manner prescribed herein; provided that prior to execution of such contract by the Fund, no fewer than four (4) trustees of the Fund approve the contract.

(d) **Construction Management/Build (CM/Build) Contracts.** The Executive
Director is authorized to enter into CM/Build contracts, as defined herein; provided that prior to execution of such contract by the Fund, no fewer than four (4) trustees of the Fund approve the contract. A record setting forth the justification for utilizing a CM/Build contract shall be provided to the Board. Notwithstanding anything herein to the contrary, award shall be made to the highest qualified vendor, after successful negotiation of a fair and reasonable price.

(e) **Job Order Contract (JOC).** The Executive Director is authorized to enter into JOC contracts, as defined herein.

(f) **Alternative Selection Mechanisms.** Notwithstanding anything herein to the contrary, the Executive Director may recommend that the Board approve procedures for the use and application of a particular selection mechanism other than those set forth in these Guidelines.

5. **Board Review of Procurement Contracts**

For each Procurement Contract to which the Fund is a party, the Executive Director will document and describe for the Board the procedure used to select the Procurement Contractor.

Section D. **Minority Business Enterprise and Women-Owned Business Enterprise Participation**

1. **Solicitation**

In order to promote the engagement of Minority Business Enterprises and Women-Owned Business Enterprises as Procurement Contractors, the Fund shall solicit offers from Minority Business Enterprises and Women-Owned Business Enterprises known to supply the goods or provide the services, interests in real estate and/or construction sought. If the provision of any goods, services, interests in real estate and/or construction under a prime contract permits or requires the use of subcontractors, said prime contract shall require the prime contractor to act affirmatively to secure participation by Minority Business Enterprises and Women-Owned Business Enterprises in such subcontract and to report the nature and extent of such efforts to the Fund.

2. **Maintenance of List of Procurement Contractors Including Minority Business Enterprises and Women-Owned Business Enterprises**

The Executive Director shall prepare and update annually a list of potential sources including Minority Business Enterprises and Women-Owned Business Enterprises of goods, services, interests in real estate and/or construction that are regularly purchased by the Fund or that the Fund expects to purchase in the following year. Executive Director's report to the Board shall include: (a) the list, and (b) the procedures established to identify new sources for the list and to notify such new sources of the opportunity to bid for contracts for the purchase of goods, services, interests in real estate and/or construction. In identifying qualified sources, including Minority Business Enterprises and Women-Owned Business Enterprises, the Executive Director
shall seek the assistance of agencies of the State of New York and the City of New York including the Department of Commerce, the Office of General Services, and the Office of Contract Compliance and Minority and Women-Owned Business Enterprises of the State and the Office of Minority Business Development of the City.

3. **Qualification as a Minority Business Enterprise or Women-Owned Business Enterprises**

The Executive director shall require each contractor seeking to be considered as a Minority Business Enterprise or Women-Owned Business Enterprise by the Fund to submit a written statement describing how it qualifies as a Minority Business Enterprise or Women-Owned Business Enterprise. The Fund shall monitor the entities considered to be Minority Business Enterprises and Women-Owned Business Enterprises to ensure their continued satisfaction of the criteria set forth in these Guidelines.

**Section E. Standard Nondiscrimination and Compliance Provisions to be Made a Part of Procurement Contracts**

Each Procurement Contract shall include the following nondiscrimination and compliance provisions:

1. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status and will undertake or continue existing programs of affirmative action to ensure that minority group members (as herein defined), including, without limitation, women, are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignments, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training. The contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this nondiscrimination provision.

2. At the request of the Fund, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the authority to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder;

3. The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract with the Fund, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status;

4. The contractor will include the provisions of subdivisions (1) through (3) of this section in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract with the
5. The contractor will comply with all provisions of this contract and of the rules, regulations, and orders issued by the Fund to implement the same.

6. The contractor will furnish all information and reports required by the Fund and by any applicable rules, regulations, and any orders issued pursuant thereto, and will permit access to its books, records and accounts by the Fund for purposes of investigation to ascertain compliance with this contract and such rules, regulations and order.

7. If the contractor does not comply with the nondiscrimination provisions of this contract or with any such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further contracts involving projects under the auspices of the Fund and such other sanctions may be imposed and remedies invoked as are provided by rule, regulations or order issued by the Fund, or as otherwise provided by law.

8. The contractor will include the foregoing provisions in every subcontract or purchase order issued in connection with the performance of the prime procurement contract as well as in any agreement with architects, engineers, accountants and legal counsel for professional services, by incorporating the text or by reference thereto, so that such provisions will be binding upon each subcontractor, professional firm or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Fund may direct as a means of enforcing such provisions, including sanctions for noncompliance.

9. The provisions of this section shall be deemed supplementary to, and not in lieu of or in substitution for the provisions of the New York State Labor Law relating to nondiscrimination, and other applicable Federal, State or City law, ordinance, rule and regulation.

10. Each contractor having a contract containing these provisions shall file, and shall cause each of his subcontractors to file, compliance reports with the Fund. Compliance reports shall be filed within such time and shall contain such information as to the practices, policies, programs, employment policies, and employment statistics of the contractors and each subcontractor, and shall be in such form as the Fund may prescribe.

11. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeships or training for such workers, the compliance report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Fund may prescribe; provided that to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training, and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Fund as part of his compliance report, and shall set forth what efforts he has made to obtain such information.

12. The Fund may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his compliance report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective
contractor deals, with supporting information, to the effect that the signer's practice and policies do not discriminate on the ground of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this contract or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of this contract. In the event that the union or the agency shall refuse to execute such a statement, the compliance report shall so certify and set forth what efforts have been made to secure such a statement, and such additional factual material as the Fund may require.

Section F. Dispute Resolution Process

All Procurement Contracts for an amount equal to or in excess of $25,000 shall include a provision for resolving disputes with the Fund, including but not limited to such matters as the scope of work required by the contract, the interpretation of the contract and the amount to be paid for extra work. Such a provision shall delineate a process that allows disputes to be resolved directly and efficiently between the Fund, or its designee, and the contractor. At a minimum, it shall (1) define when a dispute arises for resolution by the process; (2) set forth any limitations and exclusions affecting the subject matter of a dispute; (3) designate the Fund’s officers to whom the dispute must be directed; (4) specify the form and content of notices and other documents to be submitted and the deadlines by which they must be submitted; and (5) provide for any meetings to be convened as part of the dispute resolution process. In addition, in the event that the dispute is not resolved directly between the parties, the dispute resolution provision shall provide for a third party mediator to further review and resolve the dispute, with the parties to share equally in the expense of such mediation.

Section G. Procurement Contracts with Former Trustees, Officers or Employees of the Fund

The Fund may not enter into any Procurement Contract with a former trustee, officer or employee of the Fund, unless that action complies with (1) the Code of Conduct for the Trustees of the Fund and (2) all applicable laws and regulations, including, without limitation, the New York Public Officers Law.

Section H. Preparation of Annual Report on Procurement Contracts

1. The Fund shall annually prepare and approve a report on summarizing the procurement activity of the Fund for the reporting period and the Procurement Contracts entered into by the Fund during the reporting period or otherwise performed by the Fund during the reporting period. The Fund’s annual procurement contract report shall include:

(a) the Guidelines;

(b) an explanation of the Guidelines and any amendments thereto made since the last
annual report;
(c) a list of all Procurement Contracts entered into since the last annual report;
(d) a list of the Procurement Contractors performing services since the last annual report;
(e) the selection process used in connection with each Procurement Contract;
(f) a list of contract prices, fees, commissions or other charges paid to each Procurement Contractor; and
(g) any statements required by law relating to the Fund’s Guidelines or Procurement Contracts.

2. The Fund's annual report on Procurement Contracts may be made a part of any other annual report.

Section I. Distribution of Annual Report on Procurement Contracts

1. The Fund shall submit its annual report on Procurement Contracts to the Division of the Budget.

2. The Fund shall supply copies of its annual report on procurement contracts of the following:
   (a) Department of Audit and Control of the State of New York,
   (b) New York State Senate Finance committee, and
   (c) New York State Assembly Ways and Means Committee.

3. The Fund shall make copies of its annual report on Procurement Contracts available to the public upon reasonable request therefore.

Section J. Amendment of These Guidelines

The Fund shall have the power from time to time to amend these Guidelines by vote of a majority of the Board.

Section K. Effect of Noncompliance with Guidelines

Failure by the Fund to comply with the provisions of these Guidelines shall not alter, affect the validity of, modify the terms of or impair any contract or agreement for goods, services, interests in real estate and/or construction to which the Fund is a party.