

CITY UNIVERSITY CONSTRUCTION FUND
GUIDELINES FOR PROCUREMENT CONTRACTS
(as amended through August 19, 2021)

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 Fund or his/her designee.
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.
5. "Minority Business Enterprise" and a "Women-Owned Business Enterprise" shall have the meanings set forth in Section 2879 of the Public Authorities Law of the State of New York and the regulations promulgated thereunder.
6. Service-Disabled Veteran Owned Business shall have the meaning as established by New York State Executive Law 17-B.
7. 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 Procurement Contract with the Fund.

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, Women-Owned Business Enterprises and Service-Disabled Veteran Owned Business 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 responsive, responsible bidder 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 on 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 and in accordance with all applicable guidelines and requirements.

(iii) Single Source. The single source procurement method may be used in the circumstance where there is more than one vendor capable of providing the needed commodity or service, however; one vendor clearly represents the best possible source due to several factors, including price, technical requirements, capabilities, expertise, resources, facilities, and schedule. Prior to proceeding with a single source purchase, the Fund project manager must prepare a non-competitive single source justification memorandum for review by the Procurement Director and approval by the Executive Director or designee. A record setting forth the circumstances under which any such contract was awarded shall be provided in the annual report of the Fund prepared for the year in which the contract is awarded.

(iv) Sole Source. Sole Source is defined as a procurement in which there is only one vendor capable of supplying the required commodities or services. Prior to proceeding with a sole source procurement, the Fund project manager must prepare a non-competitive sole source justification memorandum for review by the Procurement Director and approval by the Executive Director or designee. A record setting forth the circumstances under which any such contract was awarded shall be provided in the annual report of the Fund prepared for the year in which the contract is awarded.

3. 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 award. 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.

4. 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.

5. 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.
6. Discretionary Purchasing. In accordance with Section 2879 of the New York State Public Authorities Law, the Fund may use its discretion in the selection of vendors to compete for Procurement Contracts for goods, services, including architectural services and engineering services, and/or construction, as follows:
 - i. Eligibility to compete for such Procurement Contracts may be limited by the Fund to those vendors Certified as Minority-Owned Business Enterprises or Women-Owned Business Enterprises by Empire State Development's Division of Minority and Women's Business Development or Certified as Service-Disabled Veteran-Owned Businesses by the New York State Office of General Services Division of Service-Disabled Veterans' Business Development. This is to provide an opportunity for such entities to compete for Procurement Contracts so as to facilitate the awarding by the Fund of a fair share of such Procurement Contracts to such entities, consistent with State law and these Guidelines.
 - ii. The total value of a Procurement Contract awarded to an eligible MWBE or SDVOB vendor under CUCF's Discretionary Purchasing authority cannot exceed \$500,000. The value of a Procurement Contract awarded to other than an MWBE or SDVOB vendor under CUCF's Discretionary Purchasing authority cannot exceed \$250,000.
 - iii. Except as otherwise provided in this Section, all other provisions of these Guidelines remain in effect.
7. Other Mechanisms Approved by the Fund's Board. The Fund may use any other procurement mechanism the Board of Trustees shall deem appropriate.
8. 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 on appropriate electronic platforms and in 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 limitation, Minority-Owned Business Enterprises, Women-Owned Business Enterprises and Service-Disabled Veteran Owned Businesses.

- (a) Procurement Opportunities Newsletter. The Executive Director may solicit bids

or proposals by placing a listing in the New York State Contract Reporter, and 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 criteria that the Fund will use to evaluate proposal submissions and make award, if any; (iv) the physical location and/or electronic address where bids or proposals are to be submitted, (v) the date when bids or proposals are due, (vi) a description of any eligibility requirements or preferences and (vii) 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 \$50,000 or More. If the actual or estimated cost of a Procurement Contract is fifty thousand dollars (\$50,000) or more, any solicitation shall be published once in the New York State Contract Reporter, published by Empire State Development and at least once in a newspaper of general circulation.
- (e) Timing. At least fifteen (15) 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.

9. Award of Procurement Contracts

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.

- (a) 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.
- (b) 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.
- (c) 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.

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

10. 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.

11. NYS Office of the State Comptroller (OSC) Review of Certain Procurement Contracts

Effective February 7, 2020, CUCF is required to submit Procurement Contracts to the OSC for contracts valued at \$250,000 or more for construction, commodities, computer equipment (including software and hardware), printing, and non-construction related services for OSC pre-award audit in accordance with NYS Division of the Budget (DOB) Bulletin H-1034.

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

In accordance with New York State Executive Law Article 15-A. CUCF is required to ensure that Minority-Owned Business Enterprises and Women-Owned Business Enterprise certified by the New York State Empire Development Corp.(ESD), have an equal opportunity to receive and participate in CUCF procurements, and to report upon such utilization. It is the intent of the CUCF to reach, on an annual basis, MWBE utilization goals as established by New York State Executive Law Article 15-A. In order to promote the engagement of Minority-Owned Business and Women-Owned Businesses as Procurement Contractors, the Fund shall solicit offers from MWBEs 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 MWBEs in such subcontract and to report the nature and extent of such efforts to the Fund.

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-Owned 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 a subcontractors, said prime contract shall require the prime contractor to act affirmatively to secure participation by Minority-Owned 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-Owned 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-Owned 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-Owned 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 certification document as a Minority-Owned Business Enterprise or Women-Owned Business Enterprise as issued by the New York State Empire Development Corp. The Fund shall monitor the entities considered to be Minority-Owned 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 Fund.
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 procurements 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 non-compliance.

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 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. Service-Disabled Veteran Owned Business (SDVOB) Participation

In accordance with New York State Executive Law Article 17-B CUCF is required to ensure that SDVOBs, certified by the New York State Office of General Services (OGS), have an equal opportunity to receive and participate in CUCF procurements, and to report upon such utilization. It is the intent of the CUCF to reach, on an annual basis, SDVOB utilization goals as established by New York State Executive Law

Article 17-B. In order to promote the engagement of Service- Disabled Veteran Owned Businesses as Procurement Contractors, the Fund shall solicit offers from SDVOBs 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 SDVOBs in such subcontract and to report the nature and extent of such efforts to the Fund.

1. Solicitation

In order to promote the engagement of Service-Disabled Veteran Owned Business Enterprises as Procurement Contractors, the Fund shall solicit offers from Service-Disabled Veteran-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 a subcontractors, said prime contract shall require the prime contractor to act affirmatively to secure participation by Service-Disabled Veteran-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 Service-Disabled Veteran Owned Business Enterprises

The Executive Director shall prepare and update annually a list of potential sources including Service-Disabled Veteran 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 Service-Disabled Veteran Owned Business Enterprises, the Executive Director shall seek the assistance of agencies of the State of New York the Office of General Services.

3. Qualification as a Service-Disabled Veteran Owned Business Enterprises

The Executive director shall require each contractor seeking to be considered as a Service-Disabled Veteran Owned Business Enterprise by the Fund to submit a written certification document as issued by the New York State Office of General Services – Division of Service Disabled Veterans’ Business Development. The Fund shall monitor the entities considered to be Service Disabled Veteran-Owned Business Enterprises to ensure their continued satisfaction of the criteria set forth in these Guidelines.

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 H. 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 I. 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 J. 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 K. 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 L. 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.

Section M. Prompt Payment

1. Authorization - This Statement of Prompt Payment Policy is adopted by the Members of the Board of the CUCF pursuant to the provisions of Section 2880 of the Public Authorities Law.
2. Purpose - It is the purpose of this Statement of Prompt Payment Policy of the CUCF to set forth the standards for the payment of bills within specific periods and to prescribe interest charges in situations where payments do not conform to these standards, as provided by section 2880 of the Public Authorities Law.
3. Prompt Payment Policy - It shall be the policy of the CUCF to process contract payments efficiently and expeditiously so as to assure payment in a timely manner to firms and organizations which do business with the CUCF and to avoid, to the greatest extent practicable, the payment of interest in cases where prompt payment does not occur as provided herein.
4. Rules and Regulations – Pursuant to Section 2880 of the Public Authorities Law, the CUCF promulgated Prompt Payment Guidelines, effective July 1, 2014. The Guidelines may be amended from time to time as needed to comply with the Public Authorities Law.

5. Definitions - The following terms shall have the following meanings unless the context shall indicate another of different meaning or intent:

- (a) "CUCF" means the City University Construction Fund.
- (b) "Designated Payment Office" means the office designated by the CUCF to which a proper invoice is to be submitted by a contractor.
- (c) "Prompt Payment" means payment of a debt due and owing by the CUCF before interest accrues thereon pursuant to this Statement of Prompt Payment Policy.
- (d) "Proper Invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price and quantity of goods, property, or services delivered or rendered, in such form and supported by such other substantiating documentation as the CUCF may reasonably require.
- (e) "Receipt of an Invoice" means (i) the date on which a Proper Invoice is actually received in the Designated Payment Office, or (ii) the date on which the CUCF, or other entity on whose behalf the CUCF is acting, received the purchased goods, property, or services covered by the Proper Invoice, whichever is later.
- (f) "Set-off" means the reduction by the CUCF of a payment due to a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the CUCF.

6. Scope - This Statement of Prompt Payment Policy shall be applicable to all contract payments. A contract payment is a payment to a contractor pursuant to a written contract, or an amendment thereto, signed by an Authorized Officer of the CUCF and of the contractor, a fully executed change order or an executed purchase order. A contractor is a person, partnership, private corporation, limited liability company, or association:

- (a) selling materials, equipment or supplies or leasing property or equipment to the CUCF;
- (b) constructing, reconstructing, rehabilitating or repairing facilities or other improvements for or on behalf of the CUCF; or
- (c) rendering or providing services to the CUCF pursuant to a contract.

7. Prompt Payment Procedure - Each contractor requesting payment shall submit a Proper Invoice and adequate documentation to support the work, services or goods provided to the Designated Payment Office.

- (a) In the case of invoices submitted by architects, engineers, contractors and other consultants pursuant to contracts awarded by the CUCF for the construction, reconstruction, rehabilitation or other improvements or facilities comprising all or part of a project, the vendor payment unit is the Designated Payment Office. Proper Invoices submitted to the vendor payment unit will be transmitted to the CUCF project manager assigned to the project for approval. Following the return of the approved proper invoice to the vendor payment unit, a payment will be processed. Payment will be made no later than 30 days, except under the circumstances specified in subdivision (d) of this section, after receipt of such proper invoice at the designated payment office.
- (b) For all other invoices for contract payments not covered by paragraph (a), the Finance

Office of the CUCF in New York, New York is the Designated Payment Office. Proper Invoices submitted by the tenth of the month will be paid by the last day of the month, but in any event payment will be made no later than 30 days after receipt of such Proper Invoice.

- (c) If a proper invoice is not paid within the periods described in (a) or (b) above, such payment will be subject to interest at the overpayment rate set by the N.Y.C. Comptroller, as agent for CUCF, and the N.Y.C. Office of Management and Budget (OMB).
- (d) In accordance with subparagraph (v) of paragraph (A) of subdivision 3 of Section 2880 of the Public Authorities Law, when the following facts and circumstances exist, the CUCF may, to the extent necessary, extend the payment date of a proper invoice to 45 days after receipt. The facts and circumstances may include, but shall not be limited to:
 - (a) a contract for which a prior overpayment has been made;
 - (b) a contract which is subject to a mechanics' lien;
 - (c) a contract which is subject to a notice of prevailing wage withholding;
 - (d) when the CUCF has been notified that an entity contracting with the CUCF or the principals thereof are the subject of criminal investigation or indictment relating to the business activities of the entity;
 - (e) those instances when the CUCF has reason to believe that the entity contracting with the CUCF has provided a false statement or material misstatement in connection with the contract.
 - (f) when the CUCF must rely on tests by a third party reported directly to the CUCF as a prerequisite for payment.
 - (g) the goods and services were not rendered in the manner detailed in the contract requirements.

8. Sources of Funds Available for Payment of Interest - The CUCF holds or has control of moneys which represent the proceeds of the issuance of its obligations or are on deposit in operating funds of the CUCF derived primarily from its fees and charges, from which it may pay interest on Proper Invoices with respect to which Prompt Payment is not made.

9. Extension of Prompt Payment Date - The date by which a contract payment may be made without the payment of interest may be extended when any of the following facts or conditions exists:

- (a) in accordance with specific statutory or contractual provision, payment must be preceded by an inspection period, the receipt of a signed receiving report in the case of the purchase of goods for an entity other than the CUCF itself, or by an audit to determine the resources applied or used by a contractor in fulfilling the terms of the contract;
- (b) the necessary state government appropriation required to authorize payment has yet to be enacted;
- (c) a Proper Invoice must be examined by the federal government or other governmental entities prior to payment; and,
- (d) such date by which contract payment must be made is modified in accordance

with section 11 below.

10. Interest Eligibility and Computation - In order for the CUCF not to be liable for the payment of interest, contract payment must be made within the periods described in section 7 after the receipt of an invoice for the amount of the contract payment due; except when the contract payment is of the type where the facts and conditions are as defined pursuant to section 9 above. Any time taken to satisfy or rectify any of the facts or conditions described in section 9 above shall extend the date by which contract payment must be made in order for the CUCF not to become liable for interest payments by an equal period of time. The CUCF shall not be liable for the payment of interest when such interest is less than ten dollars. Notification of Defects - The CUCF shall have 15 calendar days after receipt of an invoice by the Designated Payment Office to notify the contractor of (a) defects in the delivered goods, property, or services, (b) defects in the invoice, or (c) suspected improprieties of any kind; and the existence of such defects or improprieties shall prevent the commencement of the time period specified in section 7 of this Statement. When the CUCF fails to notify a contractor of such defects or suspected improprieties within 15 calendar days of receiving the invoice, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the contractor. If the CUCF, in such situations, fails to provide reasonable grounds for its contention that a defect or impropriety exists, the date by which contract payment must be made in order for the CUCF not to become liable for interest payments shall be calculated from the date of receipt of an invoice.
11. Predetermined Interval Payments - A Proper Invoice submitted by the contractor shall be required to initiate any payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each such scheduled payment and, for the purposes of determining eligibility for payment of interest and subject to the exception and time-to-rectify provisions of sections 9 and 10 above, the date by which contract payment must be made in order for the CUCF not to become liable for interest payments shall be the payment due date specified in accordance with the contract.
12. Inapplicability of Statement - The provisions of this Statement shall not apply to payments due and owing by the CUCF:
- (a) under the eminent domain procedure law;
 - (b) as interest allowed on judgments rendered by a court pursuant to any provision of law other than Section 2880 of the Public Authorities Law;
 - (c) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including, but not limited to, counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalists; to any other public CUCF or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;
 - (d) in a situation where the CUCF exercises a Set-off against all or part of the payment due the contractor; or,
 - (e) for reasonable cause, determines not to release or reduce retainage upon completion or substantial completion of a construction contract.
13. Statement Filing - The CUCF shall, within 30 days after the adoption of this statement, file a

copy of such statement, and amendments thereto, with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.

14. Contract Incorporation - The statement in effect at the time of creation of a contract is hereby deemed to be incorporated into and made a part of that contract.

15. Prompt Payment Report – The N.Y.C. Comptroller, as agent for the CUCF, shall through the N.Y.C. Procurement Policy Board, include CUCF in the prompt payment report generated for the City of New York as a whole. Such report is made available as a matter of public record.

16. Public Access - The City of New York shall make such report available as a matter of public record.

17. Effective Date - This Statement of Prompt Payment Policy shall take effect on July 1, 2014 and shall apply to contracts or purchase orders initially entered into on and after such date.