

# NATURAL HERITAGE TRUST PURCHASING AND PROCUREMENT GUIDELINES

(ADOPTED March 2013)

These guidelines amend and incorporate the Natural Heritage Trust's (the "Trust") Guidelines for the Purchasing and Award of Procurement Contracts ("Guidelines"), last adopted in 2012.

The following Guidelines set forth the policy of the Trust by virtue of a resolution adopted by the Trust's Board of Directors (the "Board"). These Guidelines set forth the operative policy for the Trust and its officers, account holders, and employees regarding purchasing and the use, awarding, monitoring, and reporting of procurement contracts. The Guidelines are not intended and shall not be deemed to grant or confer any rights or remedies to or upon any third party.

## 1. Definitions:

- A. The term "Board" means the Board of Directors of the Natural Heritage Trust.
- B. The term "procurement contract," consistent with the definition set forth in Section 2879 of Public Authorities Law, means any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of \$5,000 or more.
- C. The term "attempt to influence the procurement process" shall mean any attempt to influence any determination of a member, officer, or employee of the Trust by a person other than a member, officer or employee of the Trust with respect to (a) the solicitation, evaluation or award of a procurement contract ; or (b) the preparation of specification or request for submissions of proposals for a procurement contract .

## 2. Applicability:

- A. Except as otherwise provided herein, all Trust contracts are subject to these guidelines.
- B. Exclusions: Project procurement contracts between the Trust's Grantee and its contractor(s) are excluded from these guidelines unless otherwise required by the Executive Director or the Chief Financial Officer of the Trust.

3. Thresholds for Procurement Guidelines:

The Trust adopts the following purchasing and procurement threshold levels:

TOTAL PRICE

METHOD OF SELECTING A VENDOR &  
MAKING AN AWARD FOR PURCHASES

\$0 to \$4,999

Procurements may be confirming or non-confirming by using either a letter order or requisition/purchase order. Vendor selection and reasonableness of price at the regional level must be referenced in the request for payment.

\$5,000 to \$14,999

Requires solicitation of at least three (3) written quotes; quotes must be submitted to the Trust's Administrative Office. The Trust will then issue a purchase order or enter into a contract with the vendor.

\$15,000 to \$49,999

Requires written specifications approved in advance by the Trust, solicitation of at least three (3) written quotes and established criteria for award determination.

\$50,000 and above

Requires formal competitive procurement consisting of written specifications, solicitation of sealed bids, and advertisement in the NYS Contract Reporter (an emergency situation, circumstances that threaten health or safety, or that negatively impact the Trust's ability to generate revenue may allow for a waiver from this requirement); waiver requests are submitted directly to the Trust's Executive Director for consideration and approval.

Notes: Total price quotes must include all costs associated with the procurement; e.g. shipping, set-up, surcharges, or deposits, etc.

When it becomes necessary to competitively bid an ongoing service, the anticipated dollar value of the purchase in total and/or the entire contract term should be considered before a procurement option is pursued.

4. Approvals:

All proposals for procurement contracts are reviewed and approved by the Executive Director or Chief Financial Officer to determine the services required, the reasonableness of the proposed total price, and whether the procurement is consistent with the objectives of the account which the procurement is applied against. Trust Counsel may review and approve proposed contracts prior to execution. All procurement contracts are signed by the Executive Director. Payments are made on the basis of submitted invoices detailing the goods or services provided and/or certification of the contractors' actual expenses and confirmation of receipt of goods and/or services.

A. To the extent deemed appropriate by the Executive Director, the Chief Financial Officer or Counsel, procurement contracts may include, but should not necessarily be limited to, the following provisions:

1. Scope of services
2. Contract price or fee structure
3. Method of monitoring work performance
4. Use of Trust supplies
5. Use of Trust personnel
6. Method or basis of payment
7. Compliance with laws, rules and regulations
8. Termination of agreement for cause and for convenience (for the Trust only)
9. Amendment or assignment of agreement
10. Death of consultant
11. Laws of New York State apply
12. Creation of independent contractor relationship
13. Provisions required by law deemed inserted
14. Term
15. Bankruptcy of consultant
16. Extension provisions
17. Severability
18. Contract deliverables
19. Performance Bond

5. Professional Service Procurement Contracts

On occasion, the Trust requires the assistance of outside vendors and/or specialty firms to perform professional services. This may include, but are not limited to part-time legal, audit, and accounting services and consulting services related to a specific subject matter, program or project. In these instances, neither the Trust's personnel, nor staff available by assignment from the Office of Parks, Recreation and Historic Preservation, the Department of Environmental Conservation, or the

Department of State have the particular area of experience or expertise to perform such services. When the Trust decides to utilize professional service procurement contracts or agreements, the following guidelines are applicable:

A. Before entering into professional service procurement contracts, the Trust shall consider whether the contemplated services may be adequately and cost effectively performed by staff of the Trust or by available staff of some other State agency or under existing State contract.

B. The Trust's rationale for utilizing professional service procurement contracts may include the need for specialized expertise not available within the Trust or the need to provide services that do not arise on a sufficiently recurring basis to justify the hiring of an employee to provide the service. All professional service procurement contracts must be approved by the Executive Director.

6. Requirements for the Selection of Vendors for Procurement Contracts

A. The Trust shall make every effort to secure bids from outside vendors, contractors, or individuals for procurement contracts on a competitive basis, and to select from such bids the qualified vendor, contractor, or individual offering the most favorable terms. The Trust in its attempt to secure procurement contracts on a competitive basis to the extent practicable as determined by the Executive Director or the Chief Financial Officer, shall:

1. Solicit bids from vendors qualified in the area of the goods or services to be provided in accordance with these guidelines;
2. Where required by law or these Guidelines, or where otherwise determined to be appropriate, solicit bids from additional vendors, contractors, or individuals through advertisement in the New York State Contract Reporter;
3. Evaluate bids received on the basis of the vendor, contractor, or individual's technical qualifications, financial stability, past performance for the Trust, staff availability, experience, contract price, fee structure, compliance with bid requirements and any other necessary criteria;
4. Document the deliberative processes by which vendors, contractors, or individuals are selected.

B. Sole Source Procurement The Board, upon the adoption of these Guidelines, hereby waives the use of the procedure for selecting vendors, contractors, or individuals outlined in section A of this Part 5 in those instances where it is determined by the Executive Director or the Chief Financial Officer, that in the best interests of the Trust, it is not possible or practicable to secure such contracts on a

competitive basis due to the specialized or unique nature of the goods or services required. In such instances, the approval shall be based upon documentation detailing: (1) unique nature of the requirement; (2) the basis upon which it was determined that there is only one known vendor able to meet the need; and (3) the basis upon which the Trust determined the cost to be reasonable.

C. Single Source Procurement The Board, upon adoption of these Guidelines, hereby waives the use of the procedure for selecting contractors outlined in section A of this Part 5 in those instances where the Executive Director or the Chief Financial Officer determines that two or more vendors, contractors, or individuals can supply the goods or services but one vendor, contractor, or individual is preferred over the others for reasons such as expertise or previous experience with similar contracts. In such instance, the approval shall be based upon documentation demonstrating the justification for selecting a single vendor, contractor, or individual. This justification may include (1) past experience with a particular issue; (2) familiarity with specific agency operations; (3) experience with similar projects at other agencies or levels of government and (4) the basis upon which the Trust determined the cost to be reasonable.

D. The Board, upon adoption of these Guidelines, hereby waives the use of the procedure for selecting contractors outlined in section A of this Part 5 in those instances where the Executive Director or the Chief Financial Officer determines that the procurement of such services cannot await the solicitation/selection of such contractor pursuant to this procedure; or an emergency situation, circumstances that threaten health or safety, or circumstances that may negatively impact the Trust's ability to generate revenue are evident.

E. The Board, upon adoption of these Guidelines, hereby waives the use of the procedure for selecting vendors and contractors outlined in Section A of this Part 6 in those instances where the amount of a procurement contract does not exceed two hundred thousand dollars (\$200,000) if purchased from a small business, those certified as MWBE's under article 15-A of the Executive Law, or commodities or technology that are recycled or remanufactured.

F. Procurement contracts so approved containing a renewal option may be renewed by the Executive Director or the Chief Financial Officer, if it is determined to be in the best interest of the Trust, contingent upon the mutual written agreement of both contractual parties.

G. The Audit Committee of the Board shall approve every contract over \$100,000 . The entire Board of Directors shall approve any contract in excess of \$250,000. Consistent with Section 2879 of Public Authorities Law, all contracts involving services to be rendered in excess of one year shall be approved by the Board.

H. Annually, the Trust may review the performance of service contract arrangements to determine where and under what conditions certain contracts will be continued or discontinued.

I. Under certain circumstances the Trust may amend existing approved contracts. The factors governing the consideration of such amendments shall include, but not be limited to, the following criteria:

1. The requirement for additional work to complete a particular project was unforeseen; it must be related to the scope of the original contract and must be deemed necessary for the completion of that project. The cost (if any) of the additional work must be demonstrated to be reasonable and must be consistent with the rates charged in the contract.
2. All contract amendments require the mutual written agreement of both the Trust and the vendor, contractor, or individual.

7. Preparation of Annual Report on Procurement Contracts

A report shall be made to the Board, on an annual basis, covering the status of all procurement contracts entered into. The Board shall review and approve the annual procurement report.

A. The annual report on procurement contracts shall include:

1. The Guidelines and any amendments to the Guidelines since the last annual report;
2. A list of procurement contracts entered into since the last annual report; including the selection process used to select contractors and the status of existing procurement contracts;
3. A list of the fees, commissions and other charges paid to the contractor enumerated pursuant to clause 2 above;
4. The results of any allegation of improper lobbying influence and or non-responsibility pursuant to State Finance Law Section 139-j and k;
5. A list of those contacts between Trust personnel involved in the determination of the procurement contract and employees, agents or consultants of any proposer competing for the contract, as required to be reported by State Finance Law Sections 139-j and k.

- B. The Trust's annual report on procurement contracts may be made a part of any other annual report the Trust is required to make.
- C. The Trust shall make copies of its annual report on procurement contracts available to the public upon reasonable request.
- D. The Trust will report annually on all procurement contracts pursuant to the provisions of Section 2879 of the Public Authorities Law.
- E. Copies of the annual procurement report approved by the Board shall be sent to the Office of the State Comptroller, Assembly Ways and Means Committee, the Senate Finance Committee, the Division of the Budget and the Department of Economic Development, as required by law.

8. Minority and Woman-Owned Business Enterprises

The Trust, in order to encourage the use of Minority and Woman-Owned Business Enterprises ("MWBE") in procurement contracts, shall make prudent efforts to solicit bids from such enterprises known to have experience in the area of the goods and services to be provided, regardless of the type of contract. The Trust may consult any list maintained by any state agency or department known to the corporation which identifies MWBEs by area of expertise and contact such enterprises to solicit their bids. Furthermore, if the performance of any procurement contract permits or requires the use of a subcontractor, these contracts shall require the prime contractor to act affirmatively to encourage participation by MWBEs in such subcontract and to report the nature and extent of such efforts to the Trust. For the purpose of these Procurement Guidelines, the terms "Minority Business Enterprise" and "Woman-Owned Business Enterprise" shall have the respective meanings assigned to them in Sections 2879 (3) (c), (d) and (e) of the Public Authorities Law.

For all other procurements defined in section 2879 in the Public Authorities Law, the procedures incorporated in the Trust's approved Minority and Women-Owned Business Goal Plan ("Plan") shall be strictly followed. This Plan and its procedures, which reflect the recent amendment requirements of Section 2879 of the Public Authorities Law are incorporated into these Procurement Guidelines by reference.

In furtherance of the provisions of this Part:

A. The Trust shall designate one or more senior staff to oversee its programs established to promote and assist: (i) participation by certified MWBEs in the Trust's procurement opportunities and facilitation of the award of procurement contracts to such enterprises; (ii) the utilization of certified MWBEs as subcontractors and suppliers by entities having procurement contracts with the Trust; and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified MWBEs and other entities having procurement contracts with the Trust.

B. In addition to publication of procurement contracts in the State's procurement opportunities newsletter the Trust shall also provide notice to professional and other organizations that serve MWBEs providing the types of services procured by the Trust.

C. The Trust shall maintain lists of qualified certified MWBEs, including professional firms that have expressed interest in doing business with the Trust and ensuring that such lists are updated regularly. The Trust shall also consult the lists of certified MWBEs maintained by the Department of Economic Development pursuant to Article 15-A of the Executive Law.

D. The Trust shall establish appropriate goals for participation by MWBEs in procurement contracts awarded by the corporation and for the utilization of MWBEs as subcontractors and suppliers having procurement contracts with the Trust.

E. The Trust shall include requirements as provided by Section 2879 of the Public Authorities Law that will enable the Trust to achieve the maximum feasible portion of the goals established pursuant to this Part and shall endeavor to eliminate barriers to participation by MWBEs in the Trust's procurements contracts. The Trust shall include:

1. The expected degree of MWBE participation;
2. Provisions relating to joint ventures, under which a bidder may count toward meeting its MWBE participation goal;
3. Provisions under which the Trust may waive obligations of the contractor relating to MWBE participation after a showing of good faith efforts to comply with the requirements of these guidelines and all applicable laws pursuant to the waiver provisions contained in Article Fifteen-A of the executive law; and
4. Verification that MWBEs listed in a successful bid are actually participating to the extent listed on the project for which the bid was submitted.

9. Procurement Contracts with Former Directors, Officers or Employees of the Trust

The Trust may not enter into procurement contracts with former directors, officers or employees of the corporation where such contracts would be in contravention of law, would create a conflict of interest or would create the appearance of impropriety.

10. Procedural Controls to Prohibit Improper Lobbying Influence

The Trust will ensure that procurement contracts comply with the provisions set forth in State Finance Law Sections 139-j and 139-k to ensure that improper lobbying influence relative to all procurement contract awards does not take place and to ensure that potential vendors, contractors, and individuals are deemed responsible. Attachment A provides guidance for compliance with State Finance Law Sections 139-j and 139-k. Employees and officers should refer to the full text of the law to resolve any specific questions and/or circumstances that may arise.



#### A. Employee Reporting Requirements

Any Trust officer, account holder, or employee who becomes aware of any improper lobbying influence or any attempt to influence the procurement process shall immediately notify the Trust Ethics Officer. The Ethics Officer shall review and immediately investigate any and all allegations of improper lobbying influence or attempt thereof, or any attempt to influence the procurement process. The contractor, vendor, or individual shall have an opportunity to be heard in response to any allegation. If the attempt to influence the procurement process is found to have occurred, then the Trust may impose such sanctions as it deems appropriate, which may include but shall not be limited to the elimination of the proposal from consideration with respect to that contract award.

Acceding to improper lobbying influence or failure to report any attempt to influence the procurement process is a violation of Trust policy and employee violations of this policy may be the basis for disciplinary action and, depending on the circumstances, may be a violation of Public Officers Law Section 73 (5) or 74, subject to enforcement by the State Commission on Public Integrity. In addition, where such conduct violates the Public Officers Law, such matter shall be referred to the Office of the Inspector General and the State Commission on Public Integrity, as may be appropriate.

#### 11. Vendor Responsibility

In accordance with the guidelines set forth in the NYS Office of the State Comptroller's bulletin G-221, the Trust shall make every effort to ensure that potential contractors are deemed responsible. The Trust shall review such contractors to the extent that the Trust is satisfied that the contractor satisfies the following criteria:

- (i) The contractor is legally authorized to do business in New York State.
- (ii) The contractor possesses the integrity to perform the contract.
- (iii) The contractor is financially capable of carrying out the contract.
- (iv) The contractor has performed satisfactorily on other government contracts.

#### 12. Annual Review and Approval of Guidelines and Report of Procurement Contracts

The Board shall review annually the Trust's Purchasing and Procurement Guidelines for compliance with applicable laws, rules and consistency with best practices. The Board shall also adopt an annual Report of Procurement Contracts and disseminate it in accordance with Section 6(e) of these Procurement Guidelines.

#### 13. Effect of Noncompliance with Guidelines

Failure by the Trust to comply with the provision of these Procurement Guidelines shall not be deemed to alter, or in any way affect the validity of, or modify the terms of, or impair any rights or privileges of the Trust under, any procurement contract entered into by the Trust.

## ATTACHMENT A

### SUMMARY OF AND GUIDELINES FOR COMPLIANCE WITH § 139-J and §139-K OF THE STATE FINANCE LAW

Section 139-j of the State Finance Law imposes restrictions on how a person may communicate with a governmental entity, such as the Natural Heritage Trust (hereafter, referred as “ the Trust”), concerning a governmental procurement during a period of time called the “restricted period,” which is defined broadly as the period of time commencing from the earliest written notice announcing a government procurement until the award is approved by the State Comptroller.

These requirements cover a wide range of government contracting transactions, including the purchase of a commodity, service, technology, public work, construction and revenue contract, or the purchase, sale or lease of real property or the acquisition or the granting of other interests in real property (hereafter referred as “governmental procurement or procurement contract.” Any prospective vendor or related party in the private sector (hereinafter referred to as “the vendor”) interested in contacting the Trust concerning anyone of these types of transactions is covered under the provisions of the new law, which limits the way that such person can communicate with the Trust during the “restricted period.”

For each governmental procurement, the Trust will designate an employee or employees that may be contacted by the vendor concerning all aspects of the governmental procurement. With very few statutory exceptions, the vendor is required to communicate during the restricted period with this designated person(s) designated by the Trust (herein referred to as the “Trust Designee”). If vendor communication can be inferred by a reasonable person to be an attempt to influence the procurement, by law the vendor is required to only communicate with the Trust Designee . If communication with a vendor is interpreted as an attempt to influence the procurement, the Trust Designee is required to record your name, address, telephone number, place of principle employment, and occupation of the vendor making the contact and inquire and record whether the vendor making the contact is a principal vendor or was hired by the principal vendor to make the contact. This recorded information must be retained in the procurement record.

If, however, the vendor communicates with someone other than the Trust Designee and the vendor communication can be construed by a reasonable person to be an attempt to influence the governmental procurement, and the communication is not otherwise listed as an exception to the law, this communication will be deemed impermissible per the terms of the law which requires that the communication be reported to the Trust’s Ethics Officer for investigation. If a communication during the “restricted period” may be deemed an attempt to influence the procurement such communication may only be with the Trust Designee .

It is the policy of the Trust to interpret as broadly as possible what communications are intended to influence the governmental procurement, and are not just those attempts to influence the procurement in such a manner that would be in violation of the ethical prohibitions against gifts or which would result in any violation of the Ethics Law. Communications of a nature that are in violation of the Ethics Law will be immediately reported to the Ethics Officer for investigation regardless of whether the contact was made to the Trust designee or someone else.

As referenced before, the law specifically permits certain types of contacts by persons to the Trust concerning the governmental procurement. These are:

- the submission of written proposals in response to a request for proposal, invitation for bids or any other method for soliciting a response from interested parties;
- the submission of written questions to a designated contact, when all written questions and responses are to be disseminated to all persons interested in such procurement;
- participation in a conference where all interested parties are invited to attend;

- written complaints made to the General Counsel's Office of the Trust concerning the timely response to issues posed to the designated person, provided that such written complaints are made part of the procurement record;
- communications where the contract award has been tentatively made and where such communications are necessary to negotiate the terms of the procurement contract;
- requests made to the designated person or persons to review the procurement award;
- written protests, appeals, or other review proceedings to either the Trust or an outside agency.

Any contact alleged to be an impermissible contact under the law will be immediately referred to and investigated by the Trust's Ethics Officer. The Ethics Officer shall promptly investigate the allegation by interviewing all employees or vendor involved or who are believed to have information about the impermissible contact. If sufficient cause exists to believe that such allegation is true, the vendor being investigated shall be given notice that an investigation is ongoing and such vendor shall be afforded an opportunity to be heard in response to the allegation either by responding in writing or by providing a statement before the Ethics Officer, who shall record by appropriate means such statement for the record. The Ethics Officer shall keep a record of the investigation and shall make a written finding of the results of such investigation and report these findings to the Executive Director.

In addition, a finding by the Ethics Officer that a vendor has knowingly and willingly violated the law by making an impermissible contact shall result in a determination of non-responsibility and such vendor and all associated subsidiaries of such vendor shall not be awarded the procurement contract. The determination of non-responsibility shall also be forwarded to the Commissioner of the Office of General Services (or his or her designee), which by law is required to keep a list of such determinations for public inspection. Determinations of non-responsibility must be disclosed in all future responses to New York State procurements. With few exceptions, no procurement contract shall be awarded to any vendor who fails to disclose findings of non-responsibility within the previous four years.