



ALBANY PORT DISTRICT COMMISSION FINANCE COMMITTEE

April 23, 2025
12:00 P.M.

AGENDA

- 1) Approval of Minutes from the October 23, 2024 Finance Committee Meeting**
- 2) First Quarter 2025 Financial Review**
- 3) Review Finance Committee Charter**
- 4) Investment Policy Review**
- 5) Procurement Policy Amendments**
- 6) Enter Executive Session¹**
- 7) Exit Executive Session**
- 8) Next Meeting: July 30, 2025**

¹ Only if necessary (and if approved by a majority vote of the Commission), to discuss

- a. matters which will imperil the public safety if disclosed;
- b. any matter which may disclose the identity of a law enforcement agent or informer;
- c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- d. discussions regarding proposed, pending or current litigation;
- e. collective negotiations pursuant to article fourteen of the civil service law;
- f. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- g. the preparation, grading or administration of examinations; and
- h. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.



ALBANY PORT DISTRICT COMMISSION
MINUTES OF FINANCE COMMITTEE MEETING
October 23, 2024

Chairman Coffey called the meeting to order. In attendance were Commissioners, Steffens, Tagliento, Cinquanti and Abriel. Also present were CEO Hendrick, General Counsel Jordan, CCO Daly, CFO Stuto, DSI Schneidawin, DEA Vavura, SCM Yagan, Director of Security Stock, Logistec Operations Manager Sullivan and Chaplin for Albany Maritime Ministry Rev. Lowell Chilton.

Chairman Coffey introduced the minutes of the September 23, 2024 meeting. No changes were made to the minutes. Chairman Coffey called for a motion to approve the minutes. A motion was made by Commissioner Tagliento and seconded by Commissioner Abriel and passed unanimously.

FINANCIAL REVIEW

CFO Stuto reviewed with the Committee the forecasted preliminary results as of September 30, 2024. CFO Stuto reported that she forecasted to be at a \$2.259 million negative change in net position compared to the budget of \$1.85 million. The major variance is the public/private partnership revenue. The budget also continues to be over budget by the same amount in net depreciation and other expenses. When comparing the forecasted budget from August to September, the operating revenue is at a positive \$150,000 projection which is due to dockage, crane rental and security fees. Expenses are at a \$12,000 increase than what was projected from last month. Change in net position for capital funding is at a \$148,000 positive variance from last month. There is a decrease in the projected capital grant revenue of \$4 million, due to the PFRAP grant being completed in 2025 instead of 2024. Therefore, the projected change in net is now at \$4.2 million.

CFO Stuto also reviewed the statement of net position. She reported that the total assets, liabilities and net position has changed less than \$100,000 from the prior year. The major changes for assets from last year to this year are \$5 million more in cash, lease receivables are lower by \$3 million, grant receivables are significantly lower by \$3 million and the changes in liabilities from last year to this year are down by \$2 million in the capital lease obligation, deferred revenue for Empire Wind is down by \$7 million and accounts payable is increased by \$600,000. Both the deferred revenue and the accounts payable refer back to the expansion site and the timing of receipts and expenses. Currently, the revenue and expenses are forecasted to be \$1.5 million greater than the previous year.

Commissioner Coffey asked CFO Stuto asked if the cash was separated into different operating accounts for paying out capital. She responded that it was.

PROPOSED 2025 BUDGET

CFO Stuto presented and reviewed with the Finance Committee the proposed Budget for the 2025 fiscal year. She noted that no changes had been made since last month's presentation. CFO Stuto reviewed with the Board the comparison of the approved 2024 budget to the proposed 2025 budget. She reported that there is a small decrease of \$46,000 in the projection for operating revenue for 2025. Operating expenses are budgeted for an additional \$161,000 from 2024. Capital grant revenue is budgeted for \$4.5 million, which is a combination of the two PFRAP grants. The change in net position is budgeted for \$1.4 million compared to \$1.8 million in 2024.

Commissioner Coffey asked for a motion to accept the proposed 2025 budget as presented and to forward it to the Board for approval. A motion was made by Commissioner Cinquanti, seconded by Commissioner Abriel and passed unanimously.

EXECUTIVE SESSION

There were no items for discussion in Executive Session.

OTHER BUSINESS

No other business for discussion.

Chairman Coffey asked for a motion to adjourn the meeting. A motion was made by Commissioner Tagliento, seconded by Commissioner Cinquanti and passed unanimously. The meeting was adjourned.

ALBANY PORT DISTRICT COMMISSION COMMITTEE CHARTER

Pursuant to the Public Authorities Law, the Albany Port District Commission (the "Port") establishes board committees with responsibilities pursuant to this written charter.

PURPOSE

The purpose of this Committee Charter, and the resulting Committees, are to help improve oversight, accountability, and transparency at the Port, thereby strengthening public confidence in its operations.

STRUCTURE/COMMITTEES

The Port shall have a Governance Committee, Finance Committee and an Audit Committee.

I. The Finance Committee

A. Purpose.

1. The purpose of the Finance Committee shall be to (1) ensure the financial health of the Port (2) ensure that Port assets are protected and resources are used appropriately and (3) assist the Board in understanding the Port's financial condition.

B. Composition.

1. The Committee will consist of a minimum of three members, one of whom will be the Committee Chairperson. The Committee members and Chairperson will be designated by the Chairperson of the Port Board. A majority of the Committee members shall be "independent" as defined in section 2825 of the Public Authorities Law.
2. In addition to the members, the Chairperson of the Port Board shall be a non-voting member of the Committee.
3. Committee members shall serve annual terms and can be reappointed or replaced at the end of their term or in other instances, as needed.

C. Meetings.

1. The Committee will meet at least four times a year. All Committee members are expected to attend each meeting, in person or via telephone or videoconference.
2. A majority of voting Committee members must attend in person in order to constitute a quorum and to hold a valid meeting.

D. Authority.

1. The Committee has the authority to seek any information it requires from Port staff, outside auditors, or any other individual/entity required, all of whom are directed by the Board to cooperate with the Committee's requests.
2. The Committee has the authority to meet with the Port's staff, independent auditors or outside counsel, as necessary.
3. The Board shall ensure that the audit committee has sufficient resources to carry out its duties.

E. Responsibilities.

1. The Committee shall be primarily responsible for:
 - a. In conjunction with the Audit Committee, review and recommend new or revised financial policies to the Board for approval;
 - b. Ensuring that timely and accurate financial data is presented to the Board;
 - c. Review and recommend an annual operating budget for Board approval;
 - d. Review the financial performance of APDC against budget projections for the period to-date;
 - e. Review proposals for the issuance of debt by the Port and make recommendations to the Board;
 - f. Make recommendations to the Board concerning the level of debt and nature of debt issued by the APDC;
 - g. Develop the investment policy for the Port and review this policy annually;
 - h. As necessary, recommend Investment Policy changes to the Board for approval;
 - i. Make recommendations concerning the appointment of bond counsel, investment managers and underwriting firms used by the APDC and to oversee such individual's/entity's work;
 - j. Provide the Board with recommendations concerning the hiring/retention of the investment manager;
 - k. Reviewing the adequacy of the Committee charter annually; and
 - l. Performing other activities related to this charter as requested by the Board.

GUIDELINES FOR INVESTMENTS ALBANY PORT DISTRICT COMMISSION

These guidelines detail the operative policy regarding the investing, monitoring and reporting of funds of the Albany Port District Commission (“APDC”).

1. Purpose.

These investment guidelines are intended to:

- a) Establish a system whereby current funds on hand, in excess of immediate needs, are invested to assure that such investment assets are adequately safeguarded and collateralized.
- b) Assure that such investments are adequately liquid to meet the needs of the APDC;
- c) Assure that an adequate system of internal control is maintained; and
- d) Assure that such investments produce a reasonable rate of return.

The primary objective is protection of principal.

2. Authorization and Management.

The Board Members of the APDC have delegated the authorization to make investment decisions to the Chief Executive Officer (“CEO”) and/or Chief Financial Officer (“CFO”). These persons are to make certain that all decisions conform to:

- a) Chapter 192 of the Laws of 1925, State of New York, as amended (also known as the APDC’s enabling legislation);
- b) Section 2925 of the Public Authorities Law.

The CEO and/or CFO are authorized to deposit all funds received by the APDC in excess of those needed for on-going operations consistent with these guidelines. Additionally, pursuant to a recommendation by the CEO or CFO, a professional investment advisor (“Advisor”) shall be retained to assist the APDC’s implementation of this Policy and the APDC may grant the advisor discretion to execute transactions within the context of this Policy. The advisor will be expected to act as a fiduciary at all times in the best interest of the APDC.

3. **Types of Investments and Contracts.**

The approved types of investments are as follows:

- a) Securities issued by and guaranteed by the U.S. Government or one of its agencies. No collateral is required for this type of investment.
- b) Certificates of Deposit collateralized or fully insured by the Federal Deposit Insurance Corporation as to principal and expected interest.
- c) Deposits in “Money Market Type” accounts of banks doing business in New York that are collateralized or fully insured by the FDIC as to principal and expected interest.
- d) Obligations of New York State or obligations in which the principal and interest are guaranteed by New York State. No collateral is required for this type of investment.

Since it is not a regular business practice for a written contract with respect to these types of investments, no written contract is required. The operating practices herein shall govern.

- e) In no event will the final maturity of any purchased security exceed five years unless the security has an adjustable coupon rate. In this event, the coupon rate must adjust no less frequently than every three months, must be positively correlated with market interest rates and possess a final maturity of seven years or less. The liquidity/availability of funds must always be considered when investing for any term of greater than one year.

4. **Operating Procedures.**

- a) Approvals: The APDC requires that the CEO or CFO approve all investment transactions before they are executed. The Advisor will be consulted for appropriate investment recommendations to the CEO or CFO. The Board will be informed of all such investment transactions and review the APDC’s portfolio during the CFO’s report detailed in Section 7(a) of this Policy.
- b) Collateral Custody: The Custodian of all collateral involved in any investment transaction must be either the APDC or third party custodian acceptable to the APDC. If at any time the required collateral does not equal the value of the investment, the APDC shall inform the third party custodian of additional collateral required. If additional collateral is not added immediately by the third party custodian involved, the APDC shall demand the return of the amount invested. Any custodian or trustee of securities in any transaction of which the

APDC is a principal may not relinquish control over such securities without written consent of the APDC and the bank.

- c) The APDC requires that any financial institution with which it makes an investment either be the principal in regard to the transaction, or if the financial institution is serving as a placement agent, such information must be disclosed to the APDC.
- d) In addition to the normal entries in cash receipts, cash disbursements and general ledger regarding investments, the CFO (and/or the Advisor retained by the APDC) will maintain a schedule for each financial institution with which the APDC makes investments showing:
 - 1. Date of transaction;
 - 2. Security;
 - 3. Fund for which the investment is held;
 - 4. Location where investment is kept;
 - 5. Date of Disposition and amount realized;
 - 6. Market Value/Custodian of Collateral (if required);
 - 7. Interest rate; and
 - 8. Maturity date of the investment.

The CFO shall receive reports monthly from any custodian/bank holding APDC investments. The CFO will review such reports monthly and verify the principal amount and market values of all investments and collateral.

- e) Prior to making an investment, the APDC (or investment advisor) will review competitive investment offerings from brokers/banks in order to insure that the APDC receives a competitive value. The Certificate of Deposit will be held by the APDC's Custodian. If there is collateral involved, the APDC will immediately contact the designated custodian or trustee of the collateral and receive from custodian a written instrument requiring the APDC's agreement before custody may be relinquished.
- f) The APDC requires the custodian to send verification of funds/securities held for the APDC whenever requested to do so by the APDC.

5. Collateralization.

- a) The collateral for Certificate of Deposit or Money Market Fund deposits, is limited to "Investment Grade" obligations. "Investment Grade" obligations are direct obligations of the United States or New York State Government or obligations the principal and interest of which are guaranteed by the United States, one of its agencies or New York State Government.
- b) Whenever investments require collateralization, such investments must be collateralized by "Investment Grade" obligations as defined in item a) above.

6. **Modifications.**

- a) The APDC will review these guidelines annually in conjunction with the annual independent audit or at any time for statutory, regulatory, or policy modifications and may be resolution, modify these procedures at any time.

7. **Reports and Audits.**

The following reports and audits shall be prepared in connection with the APDC's Investment program.

- a) The CFO shall provide the Board semi-annual reports regarding any new investments, the inventory of existing investments, and the selection of investment bankers, brokers, agents, dealers or auditors. Additionally, any retained investment advisor will meet with the APDC Board at least annually to discuss the portfolio and any questions of the APDC Board.
- b) Annual Investment Report. The CFO shall prepare and submit an annual investment report to the Board after the close of each fiscal year of the APDC. Upon Board approval, the report shall be filed with the Division of the Budget, Senate Finance Committee, Assembly Ways and Means Committee, and the New York State Comptroller. Such report shall include the following:
 - 1. The investment Guidelines required by Section 2925(3) of the Public Authorities Law and any amendments to such guidelines since the last investment report;
 - 2. An explanation of the Investment Guidelines and Amendments;
 - 3. The results of the Annual Investment Audit described below;
 - 4. The investment income results of the APDC; and
 - 5. A list of the total fees, commissions or other charges paid for APDC investment associated services by the APDC since the date of the last investment report.
- c) Annual Investment Audit. Each year, the APDC shall cause its independent auditors to conduct an audit (the "Annual Investment Audit") regarding the APDC's investments. The Annual Investment Audit:
 - 1. Shall determine whether the APDC complies with its own investment policies; investment assets are adequately safeguarded given the statutory investment mandates; adequate accounts and records are maintained which accurately reflect all transactions and report on the disposition of the APDC's assets; and a system of adequate internal controls is maintained.

2. Shall determine whether the APDC has complied with the applicable laws, regulations, guidelines and public authority directives as may be issued and
 3. Should be designed to the extent practical to satisfy both the common interest of the APDC and the public officials accountable to others.
- d) Annual Investment Audit Report. The results of the Annual Investment Audit Report shall be set forth in a report (the “Annual Investment Audit Report”) which shall include:
1. A description of the scope and objectives of the audit;
 2. A statement that the audit was made in accordance with generally accepted government auditing standards;
 3. A description of any material weaknesses found in the internal controls;
 4. A description of all non-compliance with the APDC’s Investment Guidelines as well as applicable laws, regulations, guidelines and public authority directives;
 5. A statement of positive assurance of compliance on the items tested and negative assurance on those items not tested;
 6. A statement on any other material deficiency or finding identified during the audit not covered in 5 above; and
 7. Recommendations, if any, with respect to amendment of the APDC Investment Guidelines.

The Annual Investment Audit Report shall be filed within ninety (90) days after the close of the APDC’s fiscal year with the New York State Authorities Budget Office.

Item List of Revisions to Procurement Guidelines

In August of 2024 the State of New York amended its discretionary purchasing guidelines to increase the discretionary bidding process threshold for both MWBE and SBVOB vendors to \$750,000. The APDC proposes revising its Procurement Guidelines to reflect these new thresholds.

The following are the sections of the APDC Procurement Guidelines to be amended:

- **Article VI. Thresholds and Procedures**
(Language below is proposed to be amended in the guidance chart on page 5.)

| REQUIRED PROCEDURE | COMPETITIVE PROCUREMENTS Commodities and Non-Professional Services | NON-COMPETITIVE PROCUREMENTS Include: Preferred Source State Contract Sole or Single Source Piggyback Contracts Emergency Professional Services WBE/MBE/SDVOB NOT exceeding \$200,000 <u>\$750,000</u> |
|---------------------------|--|---|
| RFP/RFB | \$25,000 or more for commodities and services \$50,000 or more for construction | *The applicability of a formal RFQ/RFP/RFB process for any professional service with an estimated cost reaching \$50,000 or more shall be reviewed and considered. *A discretionary bidding process may be used for MWBE/SDVOB procurements up to \$200,000 <u>\$750,000</u> . *A MWBE/SDVOB procurement over \$200,000 <u>\$750,000</u> or more must use a formal competitive bidding process. |

- **Article VII. Waiver of Competition.**

The APDC waives the use of the competitive procedures in the following instances:

- 4) Purchases from Certified MWBEs or SDVOBs. Competition may be waived in the case of New York Certified MWBEs and SDVOBs in an amount not exceeding ~~\$200,000~~ \$750,000.

The APDC Procurement Guidelines in its entirety is attached for reference.

Article I. Purpose and Applicability.

These Procurement Contract Guidelines ("Guidelines"), adopted pursuant to Public Authorities Law Sections 2824 and 2872, set forth the operative policies of the Albany Port District Commission ("APDC") and instructions to its officers and employees regarding the use, awarding, monitoring and reporting of Procurement Contracts.

These Guidelines apply to any Procurement Contract entered into pursuant to the provisions of Section 2824 of the NYS Public Authorities Law.

The APDC reserves the right to contract with other public corporations, state agencies and the federal government without being bound to these procurement guidelines.

The APDC is subject to the Procurement Lobbying Act, Section 139- j of NYS Finance Law, which requires the authority to designate a person or persons to serve as the authorized contact on a specific procurement.

The APDC is subject to Article 15-A of the NYS Executive Law with respect to Minority and Women Owned Business Enterprise ("MWBE") and Article 3 of the NYS Veterans' Services Law with respect to Service-Disabled Veteran-Owned Business Enterprise ("SDVOB") requirements in the procurement of contracts.

The APDC is required to develop, adopt and annually review comprehensive guidelines that govern the APDC's policies and instructions concerning procurement activities. These procurement guidelines will help to ensure that funds are used in a financially sound manner, enable the APDC to acquire maximum quality at the lowest possible cost and guard against favoritism, fraud and corruption.

Article II. Policy.

The goal of the APDC procurement process is to acquire commodities and services that enable the APDC to fulfill its respective mission while ensuring fair and open competition. The APDC's procurement process is designed to: (a) guard against favoritism, improvidence, extravagance, fraud, and corruption; (b) ensure that the results meet agency needs; and (c) protect the interests of the public. The APDC shall award contracts only to responsive and responsible bidders.

Article III. Definitions.

- Best Value: basis for awarding contracts to the bidder who optimizes quality, cost and efficiency, among responsive and responsible bidders.
- Board: shall mean the Albany Port District Commission Board of Commissioners.
- Commodities: standard articles of commerce in the form of material goods, supplies, products or similar items.
- Cooperative Procurement: the action taken when two or more public procurement entities combine their requirements to obtain advantages of volume purchases, including administrative savings and other benefits.

- Cost: as distinguished from “price”. Cost includes conversion costs, life-cycle costs and encompasses “price” which is the amount charged by the vendor for the commodity or service.
- Lowest Price: basis for awarding all commodity contracts among responsive and responsible bidders.
- Piggybacking: where one government entity extends the pricing and terms of their contract to others. It must be competitively awarded and will include language allowing other governmental entities (authorities) to utilize the contract.
- Procurement Contract: any written agreement for the acquisition of commodities and /or services.
- Procurement Record: this record maintains documentation concerning a particular procurement process and the decisions made during the process. The Procurement Record is designed to both serve and protect the APDC, the business community and public during and after the procurement.
- Professional Services: any written agreement to provide a service, including but not limited to legal, accounting, management consulting, investing, banking, planning, training, statistical, research, public relations, architectural, engineering, surveying, performance (of an artistic or entertainment nature) or services of a consulting, professional or technical nature.
- Responsible: term applies to a bidder’s qualifications including but not limited to performance capabilities, financial stability, integrity and other relevant criteria established in applicable statutes or case law.
- Responsive: term applies to a bidder meeting the minimum qualifications or requirements as prescribed in a solicitation document.
- Services: performance of a task or tasks, which may include use of a material good or a quantity of material goods (includes “technology” which may be a good or service or a combination thereof).

Article IV. Responsibility for Procurement Contracts.

The Chief Executive Officer, or his duly appointed designee, has the overall day-to-day responsibility and oversight regarding the awarding and monitoring of procurement contracts.

Article V. State Finance Law §§139-j and 139-k (Procurement Lobbying).

Pursuant to State Finance Law §§139-j and 139-k, certain restrictions exist on communications between a governmental entity (APDC and any other state government entity) and an offeror/bidder during the procurement process for all contracts involving an annual expenditure greater than \$15,000. An offeror/bidder is restricted from making “contacts” from the earliest notice of intent to solicit offers (in most instances this would be the release of an RFP) through final award and approval of the Procurement Contract by the APDC (“Restricted Period”) to other than a staff member (or members) designated by the APDC unless it is a contact that is included among certain statutory exceptions. APDC employees are also required to obtain certain information when contacted during the restricted period – this involves completing an “APDC Record of Contact” form and placing it in the relevant Procurement Record.

The APDC must also make a determination of the responsibility of offeror/bidders. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period, an offeror/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the appropriate statutes and on the New York State Office of General Services website under the link for the “Advisory Council on Procurement Lobbying.”

Additionally, certain affirmations must be provided to the APDC by bidders and certain provisions must be contained within any contract/award resulting from an RFP:

- 1) The APDC must obtain from all offerors an affirmation of understanding and agreement to comply with the restrictions regarding permissible contacts during the restricted period.
- 2) The APDC must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for Procurement Contracts.
- 3) The APDC must obtain from all offerors a certification that the information is complete, true and accurate regarding any prior findings of non-responsibility.
- 4) New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j shall contain a provision authorizing the Governmental Entity to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. An example of such language is provided below:

The APDC reserves the right to terminate this contract in the event it is found that the certification filed by the offeror in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the APDC may exercise its termination right by providing written notification to the offeror in accordance with the written notification terms of this contract.

Article VI. Thresholds and Procedures.

Selection of contractors for commodities and services shall be made on a competitive basis and shall depend upon the estimated or actual cost of the commodities or services as displayed in the chart below. Contracts for commodities will be awarded to the responsive and responsible bidder with the lowest price. Contracts for services will be awarded on a “Best Value” determination.

| REQUIRED PROCEDURE | COMPETITIVE PROCUREMENTS Commodities and Non-Professional Services | NON-COMPETITIVE PROCUREMENTS Include: Preferred Source State Contract Sole or Single Source Piggyback Contracts Emergency Professional Services WBE/MBE/SDVOB NOT exceeding \$200,000 <u>\$750,000</u> |
|--|--|---|
| No Quotes Required | Under \$1,000 Preferred Source and State Contract vendors shall be used first when available | * Non-Competitive Procurement thresholds shall not preclude the APDC employees from performing their fiduciary duty of seeking the most cost-efficient procurements. Equitable distribution among vendors and fair price determinations should be made at all times. *All Non-Competitive Procurements shall have written documentation attached with justification for any non-competitive category selections. |
| 3 Phone Quotes | \$1,000- \$4,999 | n/a |
| 3 Written Quotes | \$5,000-\$24,999 for commodities and services \$5,000-\$49,999 for construction *\$15,000 or more shall be coordinated through the Procurement Office via a Request For Quote (RFQ). | n/a |
| RFP/RFB | \$25,000 or more for commodities and services \$50,000 or more for construction | *The applicability of a formal RFQ/RFP/RFB process for any professional service with an estimated cost reaching \$50,000 or more shall be reviewed and considered. *A discretionary bidding process may be used for MWBE/SDVOB procurements up to \$200,000 <u>\$750,000</u> . *A MWBE/SDVOB procurement over \$200,000 <u>\$750,000</u> or more must use a formal competitive bidding process. |
| Requisition/PO to be approved by: 1. Procurement Coordinator 2. Chief Financial Officer 3. Chief Executive Officer | Any amount equal to or greater than \$1,000 | Any amount equal to or greater than \$1,000 |
| Board of Commissioners/ Resolution/Contract | 1. Any amount equal to or greater than \$50,000 2. All service contracts over 1 year will be reviewed annually. 3. All Change Orders to existing contracts in an amount equal to or that will increase the contract total to \$50,000 or more. | |

Article VII. Waiver of Competition.

The APDC waives the use of the competitive procedures in the following instances:

- 1) Preferred Sources. To advance special social and economic goals, certain providers have “Preferred Source” status under the law. Acquisitions from these providers are not subject to competitive procurement requirements. A list of commodities and services available from Preferred Sources and the applicable procedures are maintained by the NYS Office of General Services at <http://www.ogs.state.ny.us/procurecounc/pdfdoc/pslist.pdf>.
- 2) Emergencies. The role of the Port dictates that the operation be maintained on a continuous basis without interruption. From time to time, the Chief Executive Officer may determine that emergency procurements are necessary, or contracts be executed to keep the Port safe, secure, protect life or property and when it is the best interest to preserve order or public health. A written explanation of the nature of the emergency must be completed and included in the Procurement Record. Such emergency procurements exceeding \$50,000 will be presented to the Board at its next regularly scheduled meeting.
- 3) Sole or Single Source Purchases. When only one source is available or a single source is used, a written statement explaining the need for sole or single source acquisition must be completed and included in the Procurement Record. For example, specific expertise, qualifications, or prior experience with the APDC may justify the use of single source without the need for competition even when others could perform the work.
- 4) Purchases from Certified MWBEs or SDVOBs. Competition may be waived in the case of New York Certified MWBEs and SDVOBs in an amount not exceeding ~~\$200,000~~ \$750,000.
- 5) Warranties. Under a warranty, the APDC may be required to obtain Service from a manufacturer-designated entity without competition. Additionally, certain vendors that may have installed products may be retained to continue maintenance of such products if the APDC determines that competition of such continued maintenance is not appropriate.
- 6) Professional Services. Professional services vendors must be selected based on accountability, reliability, responsibility, skill, conflicts of interests, reputation, education and training, judgment, integrity, continuity of service and other factors not easily quantified or evaluated in a competitive procurement process. Furthermore, certain professional services to be provided to the APDC, e.g., legal and accounting services, impact liability issues of the APDC and its directors. These qualifications and the concerns of the APDC regarding its liability and the liability of its directors are not necessarily found or addressed in the individual, company or firm that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

In determining whether a service fits into this category, the APDC shall take into consideration the following guidelines: (a) whether the services are subject to state licensing or testing requirements; (b) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and (c) whether the services require a personal relationship between the individual and the directors/management staff of the APDC. Professional or technical services shall include but not be limited to the following: services of an attorney; services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or

services of an insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing, editing or artwork; management of APDC-owned property; real estate brokerage services; appraisers; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

Article VIII- Request for Proposals (RFP) / Request for Bid (RFB) Procedures.

- 1) A written statement containing a description of the commodities and/or services, the required estimated schedule or duration of the commodities and/or services, and any other information required to enable the bidders to understand the service/commodity requirement, shall be included.
- 2) The RFP shall be advertised, or sent to as many firms as are reasonable, to ensure competition, including any MWBE and SDVOB firms. The APDC shall submit the notice of procurement to the New York State Contract Reporter. This requirement need not be followed under the following circumstances:
 - a. Procurement contracts awarded without competition in accordance with Section VII of this document; or
 - b. Procurement contracts being rebid for substantially the same commodities or services within forty-five (45) days after the date or proposals were originally due;
- 3) The RFP shall describe the required commodities or services, relevant completion dates or time requirements, bidder qualifications, MWBE and SDVOB requirements, and other related information and shall contain a requirement for the date, bids, time and place the proposals must be received. In cases of sealed bids, the bids should be publicly opened at a designated time and place by a duly appointed APDC representative (s).
- 4) Language required under Article 15-A (sections 312 and 313) of the New York State Executive Law regarding equal employment opportunities without discrimination will be included within the RFP.
- 5) Any information concerning the solicitation or changes to the RFP must be communicated in writing to all bidders participating in the process.
- 6) In those situations where “Best Value” is used to award the contract, a description of those factors to be considered (including cost) and their relative importance must be provided in the RFP.
- 7) A Procurement Record must be maintained which documents decisions made during the procurement process, including but not limited to the quantification of the application of criteria to determine an award that is based on “Best Value”,.
- 8) Bids are to be reviewed on the basis of the requirements in the RFP.
- 9) On request, unsuccessful bidders will be afforded an opportunity to learn why their proposals were not selected.

Article IX- New York State Public Authority Advertising and Reporting Requirements.

1.) The procurement opportunities newsletter, commonly referred to as the Contract Reporter, is New York State's central source of bid opportunities for commodities, services (including construction services) and technology. The Contract Reporter contains individual procurement opportunities valued at \$50,000 or more from State agencies, public authorities, public benefit corporations and others (Economic Development Law §142).

On a quarterly basis, The APDC is required to report projected procurement opportunities in the amount of \$5,000 - \$50,000 in the Contract Reporter System.

In addition, The APDC will report projected procurements worth \$200,000 or more on a semi-annual basis (Economic Development Law §142(5)) in the Contract Reporter System.

The APDC is also required to notify the Commissioner of Economic Development of a procurement contract for goods or services from a foreign business if the amount of the contract is equal to or greater than \$1,000,000 (State Finance Law §139-i(2)(a)).

If the procurement will exceed \$50,000, the APDC shall not make a contract award unless: it has published the procurement opportunity in the Contract Reporter; has received a publishing exemption from the Office of the State Comptroller; or the contract falls under one of the exemptions outlined in Economic Development Law §144.

2.) The APDC is required to submit annual and quarterly contract reports through the New York State Contract System.

3.) The APDC is required under Public Authorities Law to prepare a publicly available report on an annual basis, summarizing procurement activity by the APDC. The APDC reports annually on all procurement transactions with a value over \$5,000 in the Public Authorities Reporting Information System (PARIS). Only contracts in the actual or estimated amount of more than \$5,000 and for at least one year in duration need be included.

Article X. Real Estate Transactions.

Please see the APDC Property Disposition Guidelines/Property Acquisition Policy for the appropriate procedures.

Article XI. Service Contracts.

Service Contracts with terms in excess of one year. In accordance with NYS Public Authorities Law ("PBA"), service contracts with a term exceeding one year (regardless of dollar amount) are to be reviewed annually by the APDC Board.

Article XII. Minority and Women Owned Business Enterprises.

Minority and women-owned businesses shall be given full opportunity to compete in all types of Procurement Contracts. Pursuant to NYS Executive Law Article 15-A, the APDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned businesses (MWBES) in the performance of APDC contracts. The APDC advises all potential service providers that disadvantaged, minority and women-owned business enterprises will be afforded full opportunity to submit proposals in response to this notice and there will be no discrimination on the basis of race, creed, color, sex, national origin, disability or marital status in the award of the contract or any subcontract.

Article XIII. Service-Disabled Veteran Owned Businesses (SDVOB).

NYS Veterans' Services Law Article 3 provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. The APDC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of APDC contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, bidders are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of Procurement Contracts. Such participation may be as subcontractors, as protégés or in other partnering or supporting roles.

Article XIV. Involvement of Former Officers or Employees.

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

Article XV. Third Party Rights; Validity of Contracts.

A. These Guidelines are intended for the guidance of the officers and employees of the APDC only, and nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason, of any requirement or provision hereof.

B. Nothing contained in the Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of the Guidelines.

Article XVI. Miscellaneous.

- A. Where applicable federal, state or local laws, ordinances, codes, rules or regulations containing requirements which are in conflict with or impose greater obligations upon the APDC than these Guidelines, then such requirements shall take precedence over those contained herein.
- B. The APDC shall not be precluded from adopting additional requirements relating to the matters covered by these Guidelines.

Effective Date. These Guidelines shall be effective on August 28, 2023.