

FOR CONSIDERATION

April 26, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Procurement

REQUEST FOR: Adoption of an Administrative Remedy for Protesting Procurement Decisions of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD” or the “Corporation”); and Authorization to Take Related Actions

BACKGROUND

In order to supplement the Corporation’s Procurement Guidelines, previously adopted by the Directors and comply with practices of the Office of State Comptroller (“OSC”) with respect to those procurement contracts of the Corporation that are subject to OSC review, the Corporation should adopt a procurement protest procedure setting out an efficient, expeditious, and transparent administrative process by which bidders and proposers for ESD procurements can protest procurement decisions and receive prompt determinations with respect to their protests.

The attached proposed Procurement Protest Procedure sets forth the procedure to be followed by the Corporation when handling bidder and proposer protests with respect to ESD procurements.

Procurement Protest Procedure Summary

A protest must be filed by the protesting proposer or bidder, as the case maybe, within ten (10) calendar days after the first to occur of the protestor’s receipt of notice of the procurement decision, announcement of the procurement award on ESD’s website, or actual knowledge by the protester of the procurement decision. The protest should be addressed to the ESD staff member identified in the procurement materials as the Corporation’s contact person for the procurement. Within three (3) business days of receipt of a protest, when feasible, such ESD staff member will refer the protest to the ESD General Counsel who shall promptly appoint as the Protest Officer an ESD staff member with the requisite procurement knowledge who will investigate the protest as necessary and provide to the protestor a written decision with five (5) business days, when feasible, of the appointment. The written decision will be final, unless, within three (3) business days of the protestor receiving the decision, the protestor appeals in writing to the ESD General Counsel who shall review the protest record and provide the final and conclusive decision of the Corporation.

The proposed procedure is consistent with the Governor's directive that all state agencies and public authorities make responsible spending decisions, and be accountable for adequate monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness, and transparency.

Requested Action

The Directors are requested to adopt the proposed Procurement Protest Procedure and to authorize related actions.

Recommendation

Based on the foregoing, it is recommended that the Directors adopt the proposed Procurement Protest Procedure and authorize all actions related to implementing of the adopted procedure.

Attachments

Resolution
Proposed Procurement Protest Procedure

April 26, 2011

Procurement - Adoption of an Administrative Remedy for Protesting Procurement Decisions of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD” or the “Corporation”); and Authorization to Take Related Actions

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (the “Materials”), the Procurement Protest Procedure, a copy of which is attached to the Materials, be and hereby is approved and adopted, effective as of the date hereof, and the President or his designee is authorized to take such other and further action as may be deemed necessary to effectuate the foregoing Resolution.

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