

NEW YORK JOB DEVELOPMENT AUTHORITY

at the offices of the
New York State Urban Development Corporation
d/b/a Empire State Development
633 Third Avenue
New York, New York 10017

Meeting of the Directors

Monday

April 25, 2016 – 2:30 p.m.

AGENDA

I. CORPORATE ACTIONS

- A. Approval of the Minutes of the August 18, 2015 and December 18, 2015 Members' Meetings
- B. Officers of the Authority - Appointment of Officer – Executive Vice President and Chief Operating Officer
- C. 2016 Procurement Guidelines – Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

II. FOR CONSIDERATION

DISCRETIONARY PROJECT

- A. Hauppauge (Long Island Region – Suffolk County) – JDA Loan for the Benefit of Precare Corporation – Authorization to Make a Loan with New York Job Development Authority Proceeds and Take Related Actions

DRAFT – SUBJECT TO REVIEW AND REVISION

NEW YORK JOB DEVELOPMENT AUTHORITY

Meeting of the Members
Empire State Development
633 Third Avenue
New York, New York 10017

and

New York State Department of Labor
State Campus
Building 12, Room 500
Albany, New York 12240

and

New York State Department of Financial Services
1 State Street
New York, New York 10006

August 18, 2015

MINUTES

Members Present:

Mehul Patel, Designee, Commissioner of DED – Acting
Chairman
Adam Barsky
Emily Youssouf
Daniel Burstein, Designee - NYS Department of
Financial Services
Jennifer McCormick, Designee - NYS Department of
Agriculture and Markets
Anthony Joseph, Designee - NYS Department of Labor

Present for JDA:

Robert Godley, Treasurer
Kathleen Mize, Controller
Debbie Royce, Acting Secretary

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Present for ESD: Carey Gabay, First Deputy General Counsel
Benson Martin, Director of Compliance
Ray Salaberrios, Senior Director – Economic Revitalization

Also Present: The Press
The Public

The meeting was called to order at 10:23 a.m. by Acting Chair Patel. It was noted for the record that notice to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

Acting Chair Patel then set forth the guidelines regarding comments by the public on matters on the Agenda, as well as with regard to any conflicts of interest the Members may have regarding any of the items on the Agenda. It was noted that no such conflicts exist.

Next, Acting Chair Patel entertained a motion to approve the Minutes of the June 30, 2015 Members’ Meeting.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF THE MINUTES AND RATIFICATIONS OF ACTIONS TAKEN AT JUNE 30, 2015 MEMBERS’ MEETING OF THE NEW YORK JOB DEVELOPMENT AUTHORITY

RESOLVED, that the Minutes of the meeting of the Authority held June 30, 2015 as presented to this meeting, are hereby approved and all actions taken by the Members present at such

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meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Authority.

* * *

The Acting Chair then noted that there were a number of items on today's Agenda which relate to the Governor's announcements regarding New York City Airports.

Acting Chair Patel added that Mr. Beyer will present those items which relate to the role that JDA will be taking in creating LDC's and appointing counsel to assist in moving those airport projects forward.

Mr. Beyer explained that New York State has been asked to facilitate the financing or refinancing of two major airport facilities. In both cases, revenue repayments from the facility, or private parties, would be used to support a bond offering, the proceeds of which would be used to finance the applicable facility.

Both facilities, Mr. Beyer added, are serving a public purpose or otherwise are eligible to be funded with tax exempt bonds.

Mr. Beyer went on to explain that federal tax law also imposes certain restrictions on the type of entities that can issue tax exempt bonds. The JDA, he added, has the power as set forth in the Not-For-Profit Law and the Public Authorities Law, to create local development corporations ("LDC's") that comply with these federal restrictions and are also consistent with

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applicable State law.

Mr. Beyer went on to note that the Authority is being asked to form up to two of these LDC's for the purpose of issuing tax exempt bonds for these projects.

Mr. Beyer explained that the first project is JFK Airport, Terminal One. He explained that Terminal One was initially financed with bonds in the approximate amount of \$200,000,000 issued by the New York City IDA.

Mr. Beyer further explained that Terminal One is owned by Terminal One Group Association ("TOGA"), a consortium of four airlines which use the facility for their own passengers and lease out other portions of the facility to other airlines to service their passengers.

Mr. Beyer went on to note that TOGA has requested that the State refinance the existing bonds using the same revenue streams as airline rent and use fees to secure repayment as the original bonds.

Mr. Beyer then explained that the second project, which will be much larger, is the LaGuardia Airport Central Terminal.

Mr. Beyer added that the rebuilding of the Central Terminal is the centerpiece of the

DRAFT – SUBJECT TO REVIEW AND REVISION

Governor’s vision to rebuild and reconfigure the entire airport.

Mr. Beyer explained that the developer, LaGuardia Gateway Partners (“Gateway”), was chosen by the Port Authority of New York after an extended and thorough bid process. The Port Authority, he added, also requested a Job Development Authority-created entity to serve as the issuer.

Mr. Beyer further noted that Gateway also plans to use airline rent and use fees and other revenues to repay the bonds.

Mr. Beyer explained that currently the Authority intends to create one LDC to issue bonds for both projects and other transportation and eligible projects. Mr. Beyer added that any LDC created will have the same structure as the Liberty Development Corporation, which was previously authorized by the Authority.

Mr. Beyer added that the LDC, therefore, will have two Members – the Governor and JDA. Each Member, he continued, will elect three Directors and one Director elected from each Member must be present for a quorum.

Mr. Beyer went on to note that the Members’ will also sign a voting agreement, which provides that at any meeting to remove an Authority-appointed Director, the Authority will vote as instructed by the Governor.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Beyer explained that this structure will ensure that only projects the Governor supports will be permitted and it also complies with the revenue ruling obtained on the Liberty Development Corporation, which found this structure in compliance with federal tax law.

Following the full presentation, the Acting Chair called for questions or comments. Member Youssouf raised questions with regard to the JFK bonds. Specifically, she asked when the original bonds were issued and Mr. Beyer stated that they were issued ten years ago.

Member Youssouf asked if the term was for 30 years and Mr. Beyer stated that he believed that to be the case. He added that there is usually a ten-year no call and that is why the bonds are coming now for refinancing in order to take advantage of the lower interest rate.

Member Youssouf then asked with regard to LaGuardia, if it is anticipated that private activity bonds will be used.

Mr. Beyer explained that it will either be private activity bonds, which are subject to special exception for airports. He added that depending on what the final structure will be, it could be governmental bonds and therefore they would be tax exempt.

Member Barsky then asked where the Port Authority is in this and what, if any, approvals are needed from the City.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Beyer explained that the City owns the airports and leases them to the Port Authority and the Port Authority has entered into leases with the developers on both of these airports.

A further discussion was had with regard to various issues including the developer and the City. It was ultimately explained that staff is in the process of reviewing all of the documentation regarding both airports and that today's request is seeking merely to set up the LDC's so that the Authority will be ready to act when the bond deals for these projects begin to come together.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK JOB DEVELOPMENT AUTHORITY - Authorization to Cause the Creation of Up to Two Local Development Corporations for JFK Airport – Terminal 1 and LaGuardia Airport – Central Terminal Projects and Other Transportation and Eligible Projects

WHEREAS, given the uniqueness of the projects described in the attached materials, the short time within which all of these bonds must be issued, and the need for the bonds to be issued efficiently and without delay, the New York Job Development Authority (the "Authority") is being requested to create up to two new local development corporations ("LDC"). The LDC's (or, if two are formed, the LDCs) purpose will be to issue qualified bonds and such tax exempt and other non-federally tax-exempt obligations for other transportation and eligible projects as may be appropriate. The Authority will provide the initial staffing and facilities for the LDC (or, if two are formed, the LDCs).

NOW THEREFORE, the Members of the Authority hereby adopt the following resolutions:

DRAFT – SUBJECT TO REVIEW AND REVISION

I. Creation of the LDCs

RESOLVED, that pursuant to the powers granted to the Authority in Section 1804 of the New York Public Authorities Law and Section 1411 of the New York Not-For-Profit Corporation Law (the “NYNPCL”), the Members of the Authority authorize the creation of up to two local development corporations, which entities may issue debt obligations for other transportation and eligible projects as may be appropriate.

II. Certificates of Incorporation of the LDCs

RESOLVED, that the Members of the Authority authorize the filing of Certificates of Incorporation of up to two LDCs with the New York Department of State in accordance with Section 402 of the NYNPCL.

III. Members of the LDC

RESOLVED, that the LDC (or, if two are formed, the LDCs) shall have two members, each representing a separate class of membership, one of which shall be the Authority and one of which shall be the Governor.

IV. Authorization of Designees

RESOLVED, that pursuant to Section 603 of the NYNPCL, the LDC’s (or if two are formed, the LDCs) bylaws shall permit each member to designate a person (either by name or ex-officio) who shall be entitled to vote on behalf of such member on all matters upon which the member has voting rights (the “Voting Designee”).

V. Initial Voting Designee of the Authority

RESOLVED, that the Authority’s initial Voting Designee shall be the Chairman of the Authority.

VI. Directors of the LDCs

RESOLVED, that the LDC’s (or, if two are formed, the LDCs) bylaws shall permit each class of members to elect three members to an LDC’s board of directors with each class of members having the right to remove any directors elected by such class, with or without cause, upon 10 days’ notice.

VII. Voting Agreement

RESOLVED, that the Authority, in its capacity as a member of the LDC (or, if two are formed, the LDCs), shall enter into a Voting Agreement (or, if two are formed, Voting Agreements) with the Governor, in his capacity as a member of the LDC (or, if two are formed,

DRAFT – SUBJECT TO REVIEW AND REVISION

the LDCs), in which the respective Authority, or its designee, shall agree to vote as instructed by the Governor, or his designee, in connection with the removal of any Authority appointed directors, with or without cause upon 10 days' notice, the execution and delivery of such Voting Agreement to be conclusive evidence that the same was authorized by this resolution.

VIII. Further Actions

RESOLVED, that the Chairman of the Authority, and as appropriate, the other officers of the Authority be, and each acting singly hereby is, authorized, empowered and directed for and on behalf of and in the name of the Authority to execute and deliver such further instruments, documents, certificates and filings, with such changes in the terms and provisions thereof as the officer executing the same shall deem necessary and appropriate, and to do and perform such acts and deeds as they or any of them deem necessary or appropriate in order to effectuate the purposes and intent of the foregoing resolutions and that any actions taken heretofore in furtherance of any matters related hereto, are hereby affirmed and ratified.

* * *

Mr. Beyer then presented an item relating to the appointment of bond counsel for the two previously mentioned airport projects.

Mr. Beyer noted that generally, the LDC would appoint bond counsel but given the importance and the timing of these projects, staff is asking the Members to authorize JDA to initially hire counsel in order to expedite the transactions.

Mr. Beyer added that once the LDC is formed, the retainers will be deemed assigned to the new LDC. Mr. Beyer noted that neither JDA nor the to-be-formed LDC will be liable for any legal fees.

Mr. Beyer further noted that both borrowers will sign pre-financing agreements in which they, not only promise to pay the Authority's legal fees, but also to deposit an amount

DRAFT – SUBJECT TO REVIEW AND REVISION

sufficient with the Authority to pay such fees which are subject to replenishment should those fees get depleted or if costs increase.

Mr. Beyer provided information on the firms selected with regard to the JFK project.

Member Barsky asked why two firms are being hired instead of one. Among other things, Mr. Beyer explained that this is being done, in part, to comply with the Governor's directive to always have an MWBE that can handle a minimum of 30 percent of the work and that is how this has been divided.

A further discussion ensued regarding whether or not it is prudent to engage co-counsel on one matter. Among other things, Mr. Godley explained that the Corporation is pricing a bond today for the Jacob Javits Center and that there is co-counsel on that transaction.

Mr. Godley further noted that before the transaction is put in motion, the counsel's responsibilities are clearly defined and do not overlap each other.

Following the full presentation regarding items 3 and 4 on the Agenda, the Acting Chair called for any further questions or comments. Hearing none, and upon motion duly made and seconded, the following resolutions were unanimously adopted:

NEW YORK JOB DEVELOPMENT AUTHORITY – Procurement of Legal Services - Authorization to Enter into a Contract to Provide Legal Services for the New York Job Development Authority (in Anticipation of the Formation of a Local Development

DRAFT – SUBJECT TO REVIEW AND REVISION

Corporation Issuer) in Connection with Refunding Bonds Related to John F. Kennedy Airport – Terminal One and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Authority (the “Materials”), the Authority hereby finds the law firm of Winston & Strawn LLP (“Counsel”) to be responsible; and be it further

RESOLVED, that the Authority is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Authority to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Authority or Counsel consistent with this authorization are hereby ratified and affirmed.

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NEW YORK JOB DEVELOPMENT AUTHORITY – Procurement of Legal Services - Authorization to Enter into a Contract to Provide Legal Services for the New York Job Development Authority (in Anticipation of the Formation of a Local Development Corporation Issuer) in Connection with Refunding Bonds Related to John F. Kennedy Airport – Terminal One and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Authority (the “Materials”), the Authority hereby finds the Hardwick Law Firm, LLC (“Counsel”) to be responsible; and be it further

RESOLVED, that the Authority is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Authority to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Authority or Counsel consistent with this authorization are hereby ratified and affirmed.

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DRAFT – SUBJECT TO REVIEW AND REVISION

Next, Mr. Beyer presented four items, all of which relate to the request for authorization to enter into contracts for counsel in connection with the issuance of bonds to fund a new Central Terminal at LaGuardia Airport.

Mr. Beyer outlined the process involved in the selection of the firms proposed as co-counsel for issuing the aforementioned bonds.

Mr. Beyer explained that the bond counsel the Authority found to be most qualified after interviewing four other firms is Squire Patton Boggs, as the majority firm.

Mr. Beyer added that although this firm is not on JDA's pre-qualified list, their extraordinary depth and their facility for airport financing made them the overwhelming unanimous choice.

Members Youssouf and Barsky questioned the fact that the firm was not from the pre-qualified list. Mr. Beyer explained that JDA engaged in a mini RFP process which, although not required by statute, is considered good practice even with regard to firms on the pre-qualified list.

The mini RFP process, Mr. Beyer added, was utilized to get the best representation possible for this project. Mr. Beyer noted that as a result of this process, two of the firms

DRAFT – SUBJECT TO REVIEW AND REVISION

selected were not on JDA's pre-qualified list.

With regard to Squire Patton Boggs, Mr. Beyer noted that Squire Sanders was on the pre-qualified list and then the individuals from Squire Sanders merged with Patton Boggs. He added that JDA has worked with the finance people from Squire Sanders and they will be working on this deal.

Among other things, Mr. Godley noted that at the time the pre-qualified list was being established, expertise in airport financing was not something that the Authority assumed it would require.

Members Youssouf and Barsky asked that the record reflect the fact that a new RFP was done and that it also show the information regarding successor firms.

Mr. Beyer stated that the materials will be revised to show that information.

Mr. Beyer added that although the pre-qualified list is generally where JDA goes to for firms, when the people on the list do not have the needed expertise, JDA is within its rights to go through a single-source process as long as the Authority can justify the need to do so.

Member Youssouf requested that that be included in the resolution and Mr. Beyer said that that would be done.

DRAFT – SUBJECT TO REVIEW AND REVISION

A lengthy discussion ensued and it was decided that the following four resolutions would be adopted with the condition that changes will be made to the language of those resolutions as previously requested by the Members.

Both Director Barsky and Director Youssouf asked several questions regarding the need for two bond counsels. Mr. Beyer explained the need for the second firm was in compliance with the Governor's policy goals regarding MWBE firms and that work provided would not be redundant. With respect to the LaGuardia transaction, both Director Barsky and Director Youssouf also inquired about the need for, identity of and size of the firm selected as disclosure counsel. Mr. Beyer advised that the increasing complexity of federal securities law and oversight dictated the decision of staff, as well as the fact that on a complex matter multiple eyes and opinions are helpful. With respect to the questions regarding the choice and qualifications of the Law Offices of Joseph C. Reid, Mr. Beyer advised that the office was not that of a solo practitioner, that the firm had previously represented ESD and that it was also highly peer rated.

Both Directors noted above also questioned the need for a cap on legal fees. They noted that not only was the issuer not paying the fees but they expressed concern that the developer controlled the direction of representation and is capable of negotiating fair fees and it was thought that the cap could negatively impact the speed of the transaction.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Beyer explained the cap was low initially because JDA was expected to assign the agreement to the new LDC and therefore the LDC could raise the cap. Director Barsky was concerned how the public would perceive a raised cap. The Directors suggested that the materials on LaGuardia be amended to reflect a cap equal to applicable federal limits and Mr. Beyer agreed to incorporate those changes.

Following the full presentation, Acting Chair Patel called for and further questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK JOB DEVELOPMENT AUTHORITY – Procurement of Legal Services -
Authorization to Enter into a Contract to Provide Legal Services for the for New York Job
Development Authority (in Anticipation of the Formation of a Local Development
Corporation Issuer) in Connection with Issuing Bonds to Fund a New Central Terminal at
LaGuardia Airport and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Authority (the “Materials”), the Authority hereby finds the law firm of Squire Patton Boggs (“Counsel”) to be responsible; and be it further

RESOLVED, that the Authority is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Authority to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Authority or Counsel consistent with this authorization are hereby ratified and affirmed.

* * *

NEW YORK JOB DEVELOPMENT AUTHORITY – Procurement of Legal Services -

DRAFT – SUBJECT TO REVIEW AND REVISION

Authorization to Enter into a Contract to Provide Legal Services for the New York Job Development Authority (in Anticipation of the Formation of a Local Development Corporation Issuer) in Connection with Issuing Bonds to Fund a New Central Terminal at LaGuardia Airport and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Authority (the "Materials"), the Authority hereby finds the law firm of D. Seaton and Associates ("Counsel") to be responsible; and be it further

RESOLVED, that the Authority is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Authority to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Authority or Counsel consistent with this authorization are hereby ratified and affirmed.

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NEW YORK JOB DEVELOPMENT AUTHORITY – Procurement of Legal Services - Authorization to Enter into a Contract to Provide Legal Services for the for New York Job Development Authority (in Anticipation of the Formation of a Local Development Corporation Issuer) in Connection with Issuing Bonds to Fund a New Central Terminal at LaGuardia Airport and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Authority (the "Materials"), the Authority hereby finds the law firm of Dentons US LLP ("Counsel") to be responsible; and be it further

RESOLVED, that the Authority is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Authority to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Authority or Counsel consistent with this authorization are hereby ratified and affirmed.

DRAFT – SUBJECT TO REVIEW AND REVISION

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NEW YORK JOB DEVELOPMENT AUTHORITY – Procurement of Legal Services - Authorization to Enter into a Contract to Provide Legal Services for the New York Job Development Authority (in Anticipation of the Formation of a Local Development Corporation Issuer) in Connection with Issuing Bonds to Fund a New Central Terminal at LaGuardia Airport and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Authority (the “Materials”), the Authority hereby finds the Law Offices of Joseph C. Reid, P.A. (“Counsel”) to be responsible; and be it further

RESOLVED, that the Authority is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Authority to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Authority or Counsel consistent with this authorization are hereby ratified and affirmed.

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There being no further business, the meeting was adjourned at 11:14 a.m.

Respectfully submitted,

Debbie Royce
Acting Secretary

DRAFT – SUBJECT TO REVIEW AND REVISION

NEW YORK JOB DEVELOPMENT AUTHORITY

Meeting of the Members
Empire State Development
633 Third Avenue
New York, New York 10017

and

New York State Department of Labor
State Campus
Building 12, Room 500
Albany, New York 12240

December 18, 2015

MINUTES

Members Present:

Kevin Younis, Designee - Commissioner of DED – Acting
Chairman
Adam Barsky
Emily Youssouf
Daniel Burstein, Designee - NYS Department of Financial
Services
Jennifer McCormack, Designee - Commissioner - NYS
Department of Agriculture and Markets
Mario Musolino, Designee – Commissioner NYS
Department of Labor

Present for JDA:

Robert Godley, Treasurer
Kathleen Mize, Controller
Debbie Royce, Acting Secretary

Present for ESD:

Maria Cassidy, Deputy General Counsel
Jonevan Hornsby, Senior Financial Analyst – Real Estate
and Project Finance
Sean Malone, Project Associate – Small Business Lending
Ray Salaberrios, Senior Director – Economic Revitalization

DRAFT – SUBJECT TO REVIEW AND REVISION

Next, the Members were asked by Mr. Salaberrios to authorize the Authority to make a \$5,500,000 loan to DNJ Properties, LLC for the benefit of Ginsberg's Institutional Foods, Inc.

Mr. Salaberrios explained that the loan will be used for a portion of the construction costs in connection with a new 65,400 square foot warehouse with freezer and refrigeration space for the storage of Ginsberg's Institutional Foods' inventory.

Mr. Salaberrios further explained that the JDA loan will be secured by a second lien on the real estate located at 1023 Route 66 in Ghent, New York.

Mr. Salaberrios then noted that the real estate consists of two adjoining parcels containing 33 acres; one parcel is 26.1 acres located in the Town of Ghent and the other parcel is 6.9 acres located in the Town of Claverack.

Mr. Salaberrios went on to explain that the JDA loan will be guaranteed by Ginsberg Institutional Foods and G's Best Realty, Inc. He added that personal guarantees will be provided by David and Nancy Ginsberg and John and Ann Brusie.

Mr. Salaberrios then provided background information on the company including the scope of its current operations.

DRAFT – SUBJECT TO REVIEW AND REVISION

Among other things, Mr. Salaberrios noted that Ginsberg will have to meet JDA's loan-to-value requirement of 90 percent.

Mr. Salaberrios explained that if the properties do not appraise for at least \$15 million, then the amount of the JDA loan will be modified in order to adhere to that requirement.

Mr. Salaberrios added that at the completion of the project, 300 full time jobs will be retained and it is expected that 51 new jobs will be created over five years.

Following the full presentation, the Acting Chair called for questions or comments. Member Musolino asked for a clarification with regard to the job numbers noting that the numbers in the materials differed from those Mr. Salaberrios had just provided.

Mr. Salaberrios explained that he had prepared and distributed the materials before he made a trip to visit the company.

Mr. Salaberrios explained that on that visit, he was informed that Ginsberg employs 300 full time employees and therefore, the original 230 jobs figure that was entered on the application is not correct.

Member Youssouf then inquired about the Brusies' relationship to the Company.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Salaberrios explained that John Brusie is the stepson of the owner, David and the son of Nancy Ginsberg. Mr. Salaberrios added that John Brusie runs the company on a day-to-day basis and that he has been trained since his youth to take over the Company.

Ms. Cassidy requested that corrected materials updating the job numbers be provided for the Corporate Record after the meeting.

Member Youssouf asked that those corrected materials also provide clarification regarding John Brusie's relationship to the Company. Mr. Salaberrios stated that such corrected materials will be provided.

Acting Chair Younis then asked if the project will be brought back to the board if the loan-to-value threshold is not met and Mr. Salaberrios said that it will be brought back to the Board if that is the case.

The Acting Chair then asked where the Black Dirt Region is located and Member McCormack stated that it is located in Southern Orange County, New York and Northern Sussex County, New Jersey.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Hudson (Capital District – Columbia County) – DNJ Properties, LLC (Ginsberg's

DRAFT – SUBJECT TO REVIEW AND REVISION

Institutional Foods, Inc.) – New York Job Development Authority Special Purpose Fund Direct Loan Project – Real Estate Loan – Authorization to Make Loans and to Take Related Action

RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Special Purpose Fund Loan to Statewide Local Development Corporation for the benefit of DNJ Properties, LLC (Ginsberg's Institutional Foods, Inc.) for an amount not to exceed \$5,500,000 or 40% of the total project cost, whichever is less, to be funded from the proceeds of New York State Guaranteed Special Purpose Fund bonds or notes, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, subsequent to the making of the Loans, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the Loans as he or she may deem appropriate in the administration of the Loans; and be it further

RESOLVED, that the Chief Executive Officer of the Authority, or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions; and be it further

RESOLVED, that the provision of financial assistance by the Authority is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals.

* * *

Mr. Salaberrios then presented an informational report on JDA's portfolio.

Among other things, Mr. Salaberrios explained that since July 2014, the JDA Board has approved 14 loan projects totaling nearly \$31 million. Mr. Salaberrios further explained that because JDA loans are traditionally take out financing, there is often a 10 to 18 month lag between Board approval and closing.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Salaberrios expressed optimism that these recently approved projects will close as eight of the 14 projects have executed a loan authorization committing them to project completion.

Lastly, Mr. Salaberrios provided an informational report on the Upstate Veterinary Specialties (“UVS”) loan which was approved by the Members in February of 2015.

Mr. Salaberrios noted that the project is moving forward on schedule but that some unforeseen expenses have arisen increasing the total project cost by approximately \$320,000.

Mr. Salaberrios noted that UVS is asking the senior debt provider for an additional \$221,000. He added that the Company is comfortable covering the difference plus any additionally costs due to change orders until the project is complete.

There being no further business, the meeting was adjourned at 3:56 p.m.

Respectfully submitted,

Debbie Royce
Acting Secretary



FOR CONSIDERATION

April 25, 2016

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: Officers of the Authority

REQUEST FOR: Appointment of Officer – Executive Vice President and Chief Operating Officer

I. Background

It is proposed that the following appointment be approved by the Members:

<u>Name</u>	<u>Office</u>
Kevin Younis	Executive Vice President & Chief Operating Officer

II. Proposed Actions

It is proposed that Kevin Younis be appointed Executive Vice President & Chief Operating Officer (“COO”) of the Authority. Mr. Younis is the Chief Operating Officer of Empire State Development.

As stated in the By-laws, the Executive Vice President & Chief Operating Officer shall, subject to the policies established by the Authority and under the direction of the Chief Executive Officer, be generally in administrative charge of all internal activities of the Authority. The Executive Vice President & Chief Operating Officer shall possess the same powers as the Chairman and Chief Executive Officer to execute loan and loan guarantee agreements, mortgages, and other documents relating to loans, loan guarantees or mortgages, to execute agreements with banks, underwriters or others for the borrowing of money or raising funds for the Authority and other agreements as stated in any bond resolution. The Executive Vice President & Chief Operating Officer shall act as liaison officer between the Authority and his or her counterparts at all other governmental organizations, review applications for loans and loan guarantees submitted to the Authority for compliance with the rules and regulations of the Authority, make recommendations in respect thereof to the Authority, maintain current information on outstanding loans of the Authority, prepare as often as the Authority may require a report of the financial condition and operations of the Authority including the reports required by Section 1829 of the New York Job Development Authority Act, approve in the name

of the Authority all purchase orders, payrolls and vouchers relating to the operations of the Authority, including travel and expense vouchers relating to the operations of the Authority, prepare in initial form the annual operating budget of the Authority, and have such powers and duties as may be assigned to the Executive Vice President & Chief Operating Officer by the Chief Operating Officer. The Executive Vice President & Chief Operating Officer may delegate such of the foregoing powers and duties as in his or her discretion may seem appropriate.

III. Recommendation

Based upon the foregoing, I recommend approval of the above proposed actions.

Attachment
Resolution

April 25, 2016

NEW YORK JOB DEVELOPMENT AUTHORITY – Officers of the Authority – Appointment of
Officer – Executive Vice President & Chief Operating Officer

RESOLVED, that the following individual be, and he hereby is appointed to the office which appears opposite his name, effective April 25, 2016, until their resignation or removal:

NAME

OFFICE

Kevin Younis

Executive Vice President & Chief Operating Officer

and be it further

RESOLVED, that in accordance with and for all the purposes of the New York Job Development Authority Act and the By-Laws, including but not limited to the indemnification provisions thereof, the above-referenced individual is an “officer” of the Authority.

* * *



FOR CONSIDERATION

April 25, 2016

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: 2016 Procurements Guidelines

REQUEST FOR: Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

Background

At its June 30, 2015 meeting, the Members adopted updated and revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the "2015 Guidelines"). There have been no substantive changes to relevant laws, Executive Orders and directions to authorities, in the past year, however there have been some important internal procedural initiatives that impact the 2015 Guidelines. Accordingly, the Procurements Manager and staff from the Legal Department, supported by representatives of the Contracts Administration and Finance Departments, have engaged in a revision of the Guidelines. Approval of these Guidelines (the "Proposed 2016 Guidelines") is sought.

As with the 2015 Guidelines, the Proposed 2016 Guidelines are in lockstep with ESD's procurements guidelines.

Procurement Contracts Guidelines Summary

The Proposed 2016 Guidelines attached to this memorandum set forth the policies and procedures to be followed by JDA when seeking to contract for goods or services. It should be noted that these Guidelines do not have the force of law, and are intended as a statement of best practices and procedures. No contract is invalid merely because these guidelines have not been followed.

The Proposed 2016 Guidelines define the universe of procurement transactions which are subject to the policies and procedures. Generally, all procurements by JDA must be competitive, except where State law provides for non-competitive sourcing (e.g., goods purchased from approved non-profit agencies for the blind, and procurements from the Office of General Services Centralized Contracts List). Based on the expected cost of procured goods

and/or services, procurement contracts must be obtained after advertisement in the NYS Contract Reporter, except in limited instances where an exemption is obtained, generally for sole or single source procurements when only one vendor offers the desired goods or services or when a single vendor has unique qualities or experience that obviate a competitive process. The Proposed 2016 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of the Corporation's Bid Opening Guidelines and the compilation of a Procurements Record for every covered Procurement Contract.

The Proposed 2016 Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all state agencies and public authorities make responsible spending decisions, and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness and transparency.

Procedural changes, notably reflecting the ESD Board's determination at its July 16, 2015 meeting that procurement contracts in an amount up to and including \$250,000 may be approved by the Chairman, President and Chief Executive Officer of the Corporation or his duly appointed designee, and do not require formal Board approval. An exception to this procedure is that contracts for personal services that will have a term of one year or more continue to require Board approval (as well as annual review), pursuant to § 2879.3(b)(ii) of the Public Authorities Law.

Further, a Bid Protest Procedure has also been adopted to establish an internal procedure for protests that generally tracks the process for FOIL denial procedures, and ensures that Court challenges to procurement decisions must await the outcome of internal review.

The Proposed 2016 Guidelines are intended to be user-friendly and are set forth in a logical and coherent fashion that will assist staff in understanding the procedures to be followed and the substantive rules that govern procurements.

Sources of help to users and information are included as clickable links, and virtually all required forms and JDA/ESD policy and procedure documents can also be accessed from within the document by hyperlinks. The hard copy of the Proposed 2016 Guidelines presented to the Members for approval cannot contain these links, but they are shown in highlight form.

Recommendation and Requested Action

The Members are requested to adopt the Proposed 2016 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, effective as of the date of approval.

Attachments

Resolution

Proposed 2016 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

April 25, 2016

NEW YORK JOB DEVELOPMENT AUTHORITY – 2016 Procurements Guidelines - Adoption
of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement
Contracts

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 Proposed 2016 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, and the Chairman, President and Chief Executive Officer or his/her designee is authorized to promulgate the said Guidelines in electronic form and other media for the use by JDA, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

* * *

Revised Procurement Guidelines 2016

NEW YORK JOB DEVELOPMENT AUTHORITY
Guidelines Regarding the Use, Awarding, Monitoring
and Reporting of Procurement Contracts

Effective April 25, 2016

Table of Contents

1. Overview and Requirements	1
1.1. Contracts covered, and not covered, by the Guidelines	1
1.2. Types of Procurement Contracts	2
1.3. General Procurement Principles	3
2. Procurement: Overview and Requirements	4
2.1. The Procurement Process Guide	4
2.2. NYS Preferred Sources	5
2.3. OGS Centralized Contracts	5
2.4. Commodities Contracts	5
2.5. Service Contracts.....	5
2.6. Discretionary Purchases	6
2.7. Piggyback Contracts.....	6
3. Contract Reporter Exemptions	6
3.1. Reasons for Exemptions.....	6
3.2. Authorization for Exemptions.....	7
4. How to Conduct a Competitive Solicitation.....	8
5. Approval to Advertise	9
6. Contents of ANY Procurement Solicitation	9
7. Types of Solicitations	10
7.1. General	10
7.2. Requests for Proposals (“RFP”).....	11
7.3. Requests for Statements of Qualification (“RFQ”).....	11
7.4. Requests for Expressions of Interest (“RFEI”)	11
8. Compliance with Other Laws	12
8.1. Compliance with State Finance Law § 139-j and 139-k (Lobbying).....	12
8.2. Compliance with State Tax Law § 5-a (Sales Tax Registration)	13
8.3. Use of the Vendrep Form and Determination of Vendor Responsibility.....	13+4
8.4. Compliance with Executive Law Article 15-A & 17-B: Contractor and Supplier Diversity.....	14
8.5. Compliance with Iran Divestment Act of 2012	14
8.6. Encouragement of use of New York Businesses as sub-contractors and suppliers.	15
8.7. Project Sunlight.....	15
8.8. Publication on ESD Website	15
8.9. Contract Reporter Advertising Process	15+6
8.10. Selection Criteria.....	16
8.11. Bid Opening Procedures.....	16
8.12. Bid Evaluation and Vendor Selection.....	17
8.13. Determination of Responsibility – “FLIP Review” and the Vendrep form	17
8.14. Procurement Record.....	18
9. Contract Approval	18
9.1. Board Materials	18
9.2. JDA Contract and Amendment Approval	19

10. Steps After Contract Approval Is Obtained..... 21

10.1. Commitment Request Package..... 21

10.2. Contract Reporter Award Notification..... 22

10.3. Extension/Amendment of Contracts 23

10.4. Department of Budget (“DoB”) Approval 23

10.5. OSC Post-Contract Approval of \$1,000,000+ Contracts 23

11. Monitoring of Procurement Contracts 24

12. Procurement Contracts Involving Former Officers of JDA..... 24

13. Implementation of These Guidelines 25

14. Reporting..... 25

14.1. Quarterly Reports 25

14.2. Annual Reports..... 25

15. Effect on Awarded Contracts..... 25

NEW YORK JOB DEVELOPMENT AUTHORITY
Guidelines Regarding the Use, Awarding, Monitoring and
Reporting of Procurement Contracts

Effective April 25, 2016

1. Overview and Requirements

The following guidelines (the “Guidelines”) are applicable to the use, awarding, monitoring and reporting of procurement contracts of the New York Job Development Authority (“JDA”). JDA is required to adopt procurement guidelines by Article 9, Title 4 of the Public Authorities Law. The same law requires annual review and updating of the guidelines by the JDA Members (“Board”). These guidelines are in lockstep with those of the New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”).

These Guidelines are modeled on the New York State Procurement Guidelines published by the State Procurement Council (the “SPC Guidelines”). The SPC Guidelines apply to all state agencies and thus provide useful guidance for procurement by JDA (which is not a state agency as that term is defined in the SPC Guidelines). The SPC Guidelines cover some issues and procedures rarely encountered by JDA, but should be consulted by staff if a situation arises that does not appear to be covered in these Guidelines, since useful guidance may thereby be obtained. View the SPC Guidelines.

In these JDA Guidelines, a person, firm or corporation who wishes to provide goods and/or services to JDA may be called a “**vendor**” or “**offerer**” or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming a JDA vendor, a “**respondent**.”

1.1. Contracts covered, and not covered, by the Guidelines

Pursuant to Public Authorities Law § 2879 (2), “**Procurement Contracts**” are any written agreements for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more. For purposes of compliance with anti-lobbying laws contained in State Finance Law § 139-j and 139-k (see p. 12), Procurement Contracts also include the purchase, lease or grant of any other interest in real property which involves an estimated annualized expenditure by JDA in excess of fifteen thousand dollars (\$15,000).

Disposition of property (real or personal) by JDA is not a procurement covered by these Guidelines, but is instead subject to ESD’s Property Disposition Guidelines. However, where a property disposition requires a competitive process, that process should be conducted in accordance with these Guidelines to the extent practicable.

Loans made by JDA in furtherance of its economic development mission are not Procurement Contracts, but may be subject to certain provisions of these Guidelines.

A Contract or Memorandum of Understanding (“**MOU**”) with a sister State agency or authority is not considered a Procurement Contract covered by these Guidelines. Note, however, that appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement) may apply to MOUs.

In connection with certain of its projects, JDA may need to obtain a license from a governmental agency, authority, or company or a public utility in order to enter the licensor’s premises and perform work. As a precondition to receiving the license, JDA can be required to enter into agreements with the licensor that prescribe conditions for work to be performed on the site, including work and/or oversight of work which must be performed by the licensor’s personnel or contractors, as well as payment of licensor costs by JDA. Examples include licenses for work on rail and utility facilities. Agreements of this kind, often referred to as “**forced contracts**,” are not covered by the competitive solicitation requirements of these Guidelines, because JDA has no discretion or authority with respect to the work to be performed by the licensor’s personnel and contractors. However, appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement) would apply.

Procurement Contracts **under \$50,000** may be handled by **Purchase Order** approved by Department Head, Procurement Department, Controller’s Office and Contracts Administration. A formal competitive solicitation is not required, but these purchases should be made after obtaining three quotes whenever practicable. For further information, see Section 2.1 below or consult the Procurements Manager.

1.2. Types of Procurement Contracts

The types of goods and services requiring Procurement Contracts include goods and services needed to proceed with a JDA project, or to support the administrative needs of JDA. Procurements of goods cover the entire spectrum of goods, ranging from pens to motor vehicles.

Procurements of personal services include legal, accounting, management consulting, investment banking, temporary employees, planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of JDA.

Reasons for procuring personal services include:

- a. Requirements of special expertise or unusual qualifications;
- b. Nature, magnitude or complexity of services required;
- c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- d. Short-term or infrequent need for the services; and

- e. Distance of the location(s) where the services must be performed from JDA offices or facilities.

1.3. General Procurement Principles

JDA's procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet agency needs;
- Provide checks and balances to regulate agency procurement activities; and
- Protect the interests of JDA, the state and taxpayers.

Procurement Contracts are to be awarded on a **competitive basis** to the maximum extent practicable. Such awards are generally made after notice is published in the **New York State Contract Reporter** where the amount of the contract is **\$50,000 or more** and after the evaluation of proposals obtained, whenever practicable, from at least three qualified vendors or respondents. (See Section 7: Types of Solicitations).

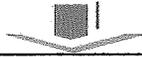
Competition in the procurement process serves both JDA and potential vendors by ensuring that the procurement process produces an optimal solution at a reasonable price; and allowing qualified vendors an opportunity to obtain JDA business, while the process guards against inflated pricing, favoritism, fraud and collusion; and allows all qualified vendors an opportunity to obtain JDA business.

2. Procurement: Overview and Requirements

2.1. The Procurement Process Guide

I. Procurements under \$50,000

If JDA's procurement needs can be met by a preferred source vendor, you must use this option. See next page.



If JDA's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Wherever practicable, you should still solicit two other quotes if this option is selected.



If JDA's needs cannot be met by the above mentioned options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business. See Section 2.6.



If JDA's needs cannot be met by the above mentioned options, you may elect use an informal solicitation. Contact the Procurement Unit for further assistance if needed.



If this is an emergency situation or only one vendor can meet the needs required for service, the initiating department head has to justify the need to Single Source or Sole Source this request in the justification memo.

II. Procurements \$50,000 +

If JDA's procurement needs can be met by a preferred source vendor, you must use this option. See next page.



If JDA's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Wherever practicable, you should still solicit two other quotes if this option is selected.



If JDA's needs cannot be met by the above mentioned options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business up to \$200,000. See Section 2.6.



If JDA's needs cannot be met by the above mentioned, use a Request of Proposals ("RFP"), Request for Qualifications ("RFQ") or Request for Expressions of Interest (RFEI"), and advertise in the Contract Reporter if this is not an emergency situation and JDA's needs can be met by more than one vendor.



If this is an emergency situation or only one vendor can meet the needs required, obtain a Contract Reporter Exemption from the Legal Department using Single Source or Sole Source exemption as appropriate.

2.2. NYS Preferred Sources

Goods and services needed by JDA may be available, without the need for competitive procurement from New York State Preferred Sources. If a Preferred Source has goods or services available in the form, function and utility required by JDA, at a price not more than 15% above the prevailing market rate, the goods or services should be obtained through the Preferred Source in the following prioritized order: NYS Department of Correctional Services Correctional Industries Program (CORCRAFT); approved charitable non-profit agencies for the blind; and approved charitable non-profit agencies for the severely disabled, qualified programs for the mentally ill, and qualified veterans workshops. For information on these Preferred Sources, see State Finance Law §162 and the Office of General Services (“OGS”) Preferred Sources Guide. The Guide is exhaustive, but the main points are easy to follow.

2.3. OGS Centralized Contracts

Goods and services needed by JDA may be available, without the need for competitive procurement, through centralized contracts held by OGS. Information about centralized contract offerings can be obtained from the list of approved state contractors maintained by OGS.

Note that even if a OGS centralized contractor is available, it is recommended that staff obtain three price quotes from other OGS contractors or other vendors not on the OGS list, unless a compelling justification exists (e.g., experience with a particular project).

2.4. Commodities Contracts

The OGS Procurement Services Group (PSG) establishes centralized contracts for commodity contracts in the form, function and utility required by State agencies, for a wide range of items commonly acquired by agencies. If the commodity is available from a centralized contract in form, function and utility consistent with JDA’s need, such item may be purchased from the centralized contract. However, JDA may competitively procure items otherwise available on a centralized contract when the resultant price is less.

2.5. Service Contracts

JDA has discretion to use the OGS centralized service contracts list. A wide and diverse range of services from routine maintenance to complex technology-based acquisitions are available through these OGS contracts. Again, JDA may competitively procure items otherwise available on the OGS centralized contract list when the resultant price is less.

2.6. Discretionary Purchases

JDA may purchase services or commodities from small business concerns or those certified pursuant to Article 15-A and 17-B of the Executive Law (Minority and Women-Owned Business Enterprises and Service-Disabled Veteran Owned Businesses), or commodities or technology products that are recycled or remanufactured, in an amount up to two hundred thousand dollars (\$200,000) without a “formal competitive process.” In such a case, three quotes should be obtained wherever practicable, and Contract Reporter advertising is advisable when time permits. The award of a discretionary purchase contract should be notified in the Contract Reporter. For more information on discretionary purchases see <http://www.ogs.ny.gov/Bu/PC/docs/PnpDiscretionaryThresholds.pdf>.

2.7. Piggyback Contracts

JDA may find it efficient to establish a contract based on another governmental entity’s contract. This is known as “piggybacking” and may be used in accordance with the criteria established by OGS in the Contract Piggybacking Guidelines under State Finance Law § 163(10)(e), available at www.ogs.ny.gov/BU/PC/SFL.asp. Note that a piggyback procurement requires approval by the OGS Procurement Services Group – this can be difficult and time-consuming to accomplish, as the OGS staff are not very familiar with public authority procurement policies and practices. For example, if the agency you wish to piggyback on is a state agency, it will have different contractual terms than those used by JDA. This may lead to delay, if OGS decides to seek approval of the proposed JDA contract terms from the Attorney General. Piggybacking is better accomplished when you wish to use a contract established by another public authority.

3. Contract Reporter Exemptions

3.1. Reasons for Exemptions

Advertising a procurement in the Contract Reporter is generally required unless specific grounds exist that constitute a reason for exemption. A Contract Reporter exemption may be granted by the Officer(s) specified in Attachment A to these Guidelines, only if any of the following circumstances can be demonstrated:

- (a) **Sole Source**. Only one source for the goods or services is available. Three examples of sole source procurements: (i) proprietary software compatible with ESD operating systems that no-one else offers; (ii) a printer’s warranty requiring that only a toner cartridge supplied by the manufacturer could be used without voiding the warranty; (iii) a vendor has developed a proprietary system for remediating contaminated land, unavailable from anyone else.

- (b) **Single Source.** The required goods or services are available from two or more vendors, but a particular vendor is preferable because of specific factors such as, without limitation, past experience with a particular issue; familiarity with JDA and/or ESD's operations; experience with similar projects of JDA and/or ESD, other agencies or at other levels of government; demonstrated expertise; or capacity and willingness to respond to the situation. An example would be an environmental consultant who worked on an EIS for a project and now a Supplemental EIS is required for the same project; many consultants could do the work, but the original consultant's familiarity with the project justifies selection as a single source.

- (c) **Emergency Circumstances.** Emergency circumstances exist when an urgent and unexpected situation arises which places public health or safety or the use or conservation of resources at risk and requires immediate action. Poor or late planning does not constitute an emergency. Contracts entered into as a result of an emergency situation should only cover the goods or services reasonably necessary to stabilize, ameliorate or remedy the situation. An example is a hazardous condition at a building owned by JDA: a contractor can be hired immediately to deal with the situation.

NOTE: Notwithstanding any Contract Reporter exemption that may be granted for any of the reasons set forth above, a reasonable attempt should be made wherever practicable to solicit at least three competitive bids, with written confirmation of the bids furnished within a reasonable time and maintained in the contract file. Also, any sole or single source contract awarded in the amount of \$50,000 or more should be notified in the Contract Reporter (Economic Development Law, §143 (4)).

3.2. Authorization for Exemptions

The initiator of the proposed contract must obtain a written Contract Reporter exemption authorization. This is done by means of a memorandum to the Officer(s) specified in Attachment A to these Guidelines.

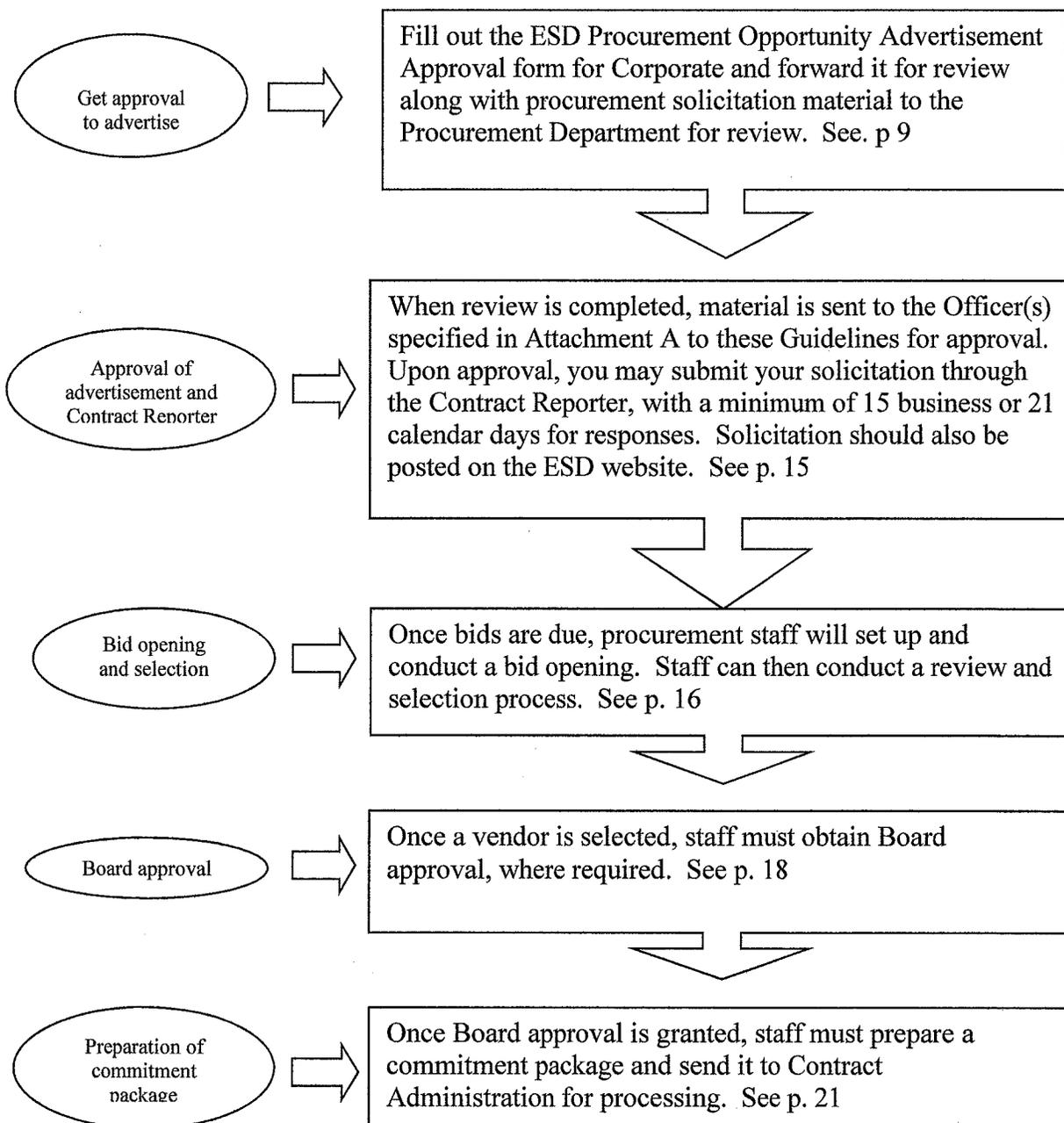
The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that the cost of the proposed contract is reasonable under the circumstances. A template Exemption Memo is found [here](#).

If the proposed contract amount is over \$250,000, or is a personal services contract that will last more than one year, the exemption authorization should be obtained before the Board's or President's approval. If the proposed amount is \$250,000 or less, and the term of the contract is less than one year, the exemption authorization should be obtained from the Officer(s) specified in Attachment A to these Guidelines, prior to contract execution and the commencement of any services or delivery of any goods.

Note that even if a Contract Reporter exemption is granted, compliance with SFL § 139-j and 139-k (Lobbying Laws) and State Tax Law § 5-a must still be satisfied (see Section 8.1, p.12). Where appropriate, a statement from the staff initiator that the price obtained for the goods or service is compatible with market pricing must be presented with the exemption request.

At the time JDA enters into a contract with a single or sole source provider for an amount in \$50,000 or more, JDA should submit an announcement of the contract for publication in the NYS Contract Reporter, and must identify the recipient of the contract.

4. How to Conduct a Competitive Solicitation



5. Approval to Advertise

Prior written approval of the Officer(s) specified in Attachment A to these Guidelines is required when you need to advertise a procurement opportunity, including Requests for Proposals (“RFPs”), Requests for Statements of Qualifications (“RFQs”) and Requests For Expression of Interest (“RFEIs”) (See Section 7: Types of Solicitation).

Note also that other approvals may be required to comply with State Division of Budget procedures (see Section 11.4). Submit the ESD Procurement Opportunity Advertisement Approval form (select Corporate) to the appropriate officer at least 10 business days in advance of the relevant New York State Contract Reporter publication submission date (the Contract Reporter is published daily).

6. Contents of ANY Procurement Solicitation

For all Procurement Contracts (see section 1.1), whether the procurement is formal (such as an RFP, RFQ or RFI) or informal (such as procurement for less than \$50,000, or a Discretionary Purchase from an MWBE or SDVOB for up to \$200,000) the same basic information should be included in the solicitation:

- (i) What goods are being sought or what scope of services is desired;
- (ii) What the projected length (“term”) of the resultant contract will be;
- (iii) What criteria will be used in evaluating bids, and how those criteria are weighted? For example, price, bidders’ expertise, past history of government contracts, references/testimonials;
- (iv) Where known, the maximum price that JDA is prepared to pay for the goods or services;
- (v) A schedule of relevant dates (when bid is due, when questions may be asked or briefing meetings held, etc);
- (vi) JDA’s insurance requirements (obtained from ESD’s Contract Administration for all solicitations);
- (vii) JDA’s contractor and supplier diversity requirements: Minority and Women-owned Business Enterprise and Service-Disabled Veteran-Owned Business participation goals (M/WBE and SDVOB);
- (viii) Disclosure to bidders that they must be able to demonstrate that they are responsible bidders, in good standing under the laws of New York and capable of fulfilling the requirements of the contract, and untainted by past non-performance or criminality;

(ix) A copy of the ESD standard terms and conditions that the successful vendor will be expected to agree to. This will generally be JDA's Schedule A (For Consultants or for Law Firms and Special Consultants) - Standard Terms and Conditions. IMPORTANT: JDA's standard terms and conditions must be sent to potential vendors as early in the process as possible, to avoid later disputes about terms.

(x) VENDREP Form where needed (See Sections 8.3);

(xi) Proof that the vendor is authorized to do business in New York State, if services are to be performed in New York State. Generally, this will require NYS Department of State Registration, which can be checked [here](#);

(xii) Encouragement of use of New York State businesses as sub-contractors or suppliers (See Section 8.6).

7. Types of Solicitations

7.1. General

There are a number of procurement techniques available, including Request for Proposals (RFP) and Request for Statements of Qualifications (RFQ) and, rarely, Requests for Expressions of Interest (RFEI). When selecting among these various approaches, the determining factors are:

- The importance of price or cost as a component in the review of incoming bids or proposals; and
- The ability to define specifications for goods or services being acquired, or to obtain those specifications from potential vendors (where the RFEI may be useful).

Generally, contracts for goods are to be awarded on the basis of "lowest price" and contracts for services are to be awarded on the basis of "best value" among responsive and responsible vendors. "Best value" is the basis for awarding service and technology contracts to the vendor that optimizes quality, cost and efficiency, among responsive and responsible vendors. The basis for a "best value" contract award must be, wherever possible, quantifiable. However, all procurement solicitations issued by JDA are to be guided by the same basic principles:

Clarity: Procurement documents should clearly convey to vendors what JDA wants to buy;

Fairness: No vendor should be advantaged over another. All information concerning the solicitation shall be conveyed in writing to all vendors participating in the process, including but not limited to process rules and evaluation criteria;

Openness: All relevant vendors should have an equal opportunity to respond to the offering.

Disclosure of Selection Criteria: The criteria for awards should be developed before bids/proposals are received. Vendors should know generally the basis upon which their offers are being judged. Note that if cost is weighted below 20%, a written justification for such weighting should be prepared and included in the Procurement Record;

Efficiency: The process should be efficient, fair and able to withstand public scrutiny.

7.2. Requests for Proposals (“RFP”)

RFP’s solicitations may range from relatively uncomplicated procurements to highly complex, long term efforts involving the significant commitment of both JDA and vendor resources.

RFPs follow a common format, focusing on a description of tasks including, but not limited to:

- Description of program objectives and background;
- Scope of services to be provided;
- Detailed requirements or specifications (required qualifications of vendors, “what” is needed and “how” services should be provided). Note that the terms of the RFP may not be knowingly tailored to favor a particular vendor.

7.3. Requests for Statements of Qualification (“RFQ”)

RFQ’s are appropriate for retention of qualified pools of contractors to provide defined types or scopes of services (and, rarely, goods) required by JDA on a regular or semi-regular basis as the need arises; or to select professional services to be rendered at pre-established rates. Competitive establishment of a pool or list of pre-qualified vendors is appropriate, for example, in the case of contractors or property appraisers. If JDA has established a list of pre-qualified contractors, unless services will be rendered by all qualified vendors at rates not to exceed a pre-set maximum, three quotes should be obtained from vendors on the list, and/or from vendors known to JDA outside the list.

7.4. Requests for Expressions of Interest (“RFEI”)

RFEIs are generally appropriate when JDA does not know the precise scope of services or goods required, and wishes to obtain this information from prospective vendors. An example would be a proposal for adaptive re-use of JDA or other state surplus property, where the re-use is likely to be dependent on the prospective respondents’ needs or ideas.

8. Compliance with Other Laws

8.1. Compliance with State Finance Law § 139-j and 139-k (Lobbying)

State Finance Law (“SFL”) § 139-j and 139-k apply to all Procurement Contracts over \$15,000, regardless of whether the contract was competitively bid.

Among other things, SFL § 139-j and 139-k: (i) govern permissible communications between potential vendors, staff or other involved governmental entities during the procurement process; (ii) require the disclosure of such communications, as well as prior determinations of vendor non-responsibility; and (iii) establish sanctions for knowing and willful violations of such provisions, including disqualification from eligibility for an award of any contract.

Specifically, SFL § 139-j and 139-k require that only permitted JDA contact person(s) identified in solicitation materials may communicate with potential bidders regarding the solicitation, from the issuance of the earliest written notice of a request for proposal through the final award and approval of any resulting contract. This period is defined by law as the “Restricted Period.”

SFL § 139-j (6)(b) also requires potential vendors to complete the Offerer’s Affirmation of Understanding and Agreement to comply with JDA’s procedures relating to permissible contacts. This written affirmation is deemed to apply to any amendments to a procurement submitted by JDA after an initial affirmation is received with an initial bid.

SFL § 139-k governs the disclosure of prior non-responsibility determinations by potential vendors. SFL § 139-k(5) requires potential vendors to certify that the information they provide to JDA for consideration in its determination of vendor responsibility is true and accurate. Therefore, all prospective vendors must complete and submit two forms mandated by SFL § 139-j and § 139-k as part of their proposals: 1) the Offerer’s Affirmation of Understanding and Agreement; and 2) the Offerer’s Disclosure of Prior Non-Responsibility Determinations.

When contacted during the Restricted Period, staff, must obtain the following information: the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact. Further, staff must inquire whether the person or organization making the contact was the offerer or retained, employed or designated by the offerer. All such recorded contacts must be included in the procurement record for the procurement contract.

In addition, staff must record any contacts that reasonably appear to be an attempt to influence the procurement process as well as contacts with staff members other than the designated contact person(s) during the Restricted Period of procurement. However, SFL § 139-j and 139-k do not prohibit an offerer from communicating with a member of the state legislature or legislative staff about a government procurement, provided such member of the state legislature or legislative staff is acting in his or her official capacity. If a vendor is found to have knowingly and willfully violated the State Finance Law provisions, that prospective vendor and its subsidiaries, related or successor entities will be determined to be a non-responsible vendor, and will not be awarded any contract issued pursuant to the solicitation. Two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State government procurement contract.

For further guidance, staff engaged in the procurement process should review JDA's policy regarding permissible lobbying contacts, and the required language for solicitations by JDA to ensure compliance with SFL § 139-j and 139-k.

Note that, once a recommended vendor has been selected after compliance with the competitive bidding process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the designated contact person, although it is good practice to have the contact person present. However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such. For example: an employee who is in the process of negotiating the terms of a land development deal which the Board has not approved, receives a call from an outside person saying that the vendor should get more development land because the vendor has a wonderful track record. Such a call constitutes lobbying and must be reported as such. The caller should be informed that the call will be reported, and asked to communicate directly with the designated contact person in the future.

8.2. Compliance with State Tax Law § 5-a (Sales Tax Registration)

State Tax Law § 5-a prohibits JDA from approving any contract valued at more than \$100,000 with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the four quarters preceding the proposed contract date, and is not registered with the Department of Taxation and Finance ("DTF") for sales and compensating use tax purposes.

Accordingly, all respondents to a solicitation where the amount of the contract is expected to exceed \$100,000 must include in their responses a properly completed Form ST-220-CA. However, if a vendor is not registered with DTF because of a lack of sales of over \$300,000 within the relevant period, the vendor must submit an affidavit so certifying. Note also that § 5-a does not apply to contracts for architectural, engineering or surveying services. If in doubt, contact the legal department after having reviewed DTF Publication 223.

Failure to include a properly completed form ST-220-CA or affidavit may be a basis for considering any such response incomplete. However, the vendor or respondent should be given an opportunity to cure such failure, because some agencies do not require the form until contract signing, and vendors may not realize that JDA practice is different. Only the primary respondent vendor completes Form ST-220-CA, but Schedule A to Form ST 220-CA requires detailed information from the vendor's sub-contractors, such as tax ID number, etc. If applicable, certificates of authority evidencing registration with DTF for sales tax purposes must be attached by the prime vendor and all the sub-contractors.

Further in accordance with the requirements of § 5-a, any contract resulting from a solicitation will require periodic updating of the certifications contained in Form ST-220-CA.

8.3. Use of the Vendrep Form and Determination of Vendor Responsibility

As required by Executive Order, all vendors must be found to be “responsible”, and remain so through the term of the contract. The Office of the State Controller has developed a useful resource, the VENDREP form, which should be requested from all bidders for contracts where a Vendor Responsibility determination will be needed (most contracts, and all which will require Board approval). See Section 9.4 below for further guidance on vendor responsibility. The Vendrep forms can be accessed at www.osc.state.ny.us/vendrep/webresources.htm.

8.4. Compliance with Executive Law Article 15-A & 17-B: Contractor and Supplier Diversity

All Procurement Contracts must comply with the requirements of Executive Law Article 15-A, which promotes employment and business opportunities for minorities and women on State contracts “to encourage and assist State agencies in their efforts to increase participation by minority and women-owned business enterprises (“MWBEs”) on State contracts so as to facilitate the award of a fair share of such contracts to MWBEs.”

All Procurement Contracts must also comply with the requirements of Executive Law Article 17-B, which acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, respondents for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Where practical, feasible and appropriate, JDA shall promote and encourage participation by MWBEs and SDVOBs in the selection and award of all contracts. Such MWBE and SDVOB participation shall be documented in a regular supplement, prepared by JDA’s Office of Contractor and Supplier Diversity (“OCSD”), for inclusion in the quarterly and annual reports made by Contracts Administration to the Board. To assist in the gathering of this information, the originator must provide OCSD with a completed Utilization Plan of MWBE and separately SDVOB Participation, from the potential contract awardee, for OCSD’s review and approval, prior to contract award. The required forms are accessible [here](#) and can be found at the bottom of the RFP page.

8.5. Compliance with Iran Divestment Act of 2012

Every bid or proposal made to JDA pursuant to a competitive solicitation as provided in these Guidelines must contain the following statement, signed by the bidder or respondent and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law."

The list in question is maintained by OGS. No bid that fails to certify compliance with this requirement may be accepted as responsive, unless the bidder includes a statement in compliance with the Iran Divestiture Act (contact the Legal Department for guidance in such a case).

8.6. Encouragement of use of New York Businesses as sub-contractors and suppliers.

The Secretary to the Governor has issued a directive that provides that all vendors who anticipate using sub-contractors or suppliers to fulfill procurement contracts must be encouraged (but not required) to use New York State businesses. All procurement solicitations of any kind must include specific language aimed at such encouragement. The model language can be found at http://intranet.empire.internal/Resources/Data/Procurement/03042014_NYS_SubcontractorsandSuppliers.pdf

8.7. Project Sunlight

Project Sunlight is an important component of the Public Integrity Reform Act of 2011. Under this law, state governmental entities specified in the law are required to cooperate with the Office of General Services (OGS) and identify in a database developed by OGS all individuals, firms or other entities (other than State or local governmental agencies) that appear before such entity on behalf of themselves or in a representative capacity on behalf of a client or customer for any of various specified purposes. This includes appearances related to (a) procurement, (b) ratemaking, (c) regulatory matters, (d) judicial or quasi-judicial proceedings, (e) adoption or repeal of a rule or regulation.

Project Sunlight's reporting requirement for procurement appearances applies to those appearances that are for the purpose of procuring a State contract, irrespective of whether there is a governmental procurement planned. Thus, reporting is required for appearances relating to State contracts for which a Restricted Period under the Procurement Lobbying Law has not been established and without regard to whether a governmental procurement is anticipated. Appearances during the Restricted Period—whether they are bid clarification meetings or bid interviews or any other permissible contact under the State Finance Law do not need to be reported. As well as, appearances following the award of a State contract do not need to be reported.

8.8. Publication on ESD Website

Competitive solicitations must be made available on the ESD website after advertisement in the NYS Contract Reporter. This website is also the appropriate place to post Questions and Answers regarding the procurement.

8.9 Contract Reporter Advertising Process

As stated above, JDA must advertise in the New York State Contract Reporter all contracts for the acquisition of goods and services of \$50,000 or more, unless an exemption is granted. In

order to access the online system and place the advertisement, the initiator should contact Contracts Administration.

The minimum time for vendors to respond to a Contract Reporter solicitation is 15 business days (i.e., Saturdays, Sundays and legal holidays are excluded). View the Contract Reporter's daily publication schedule.

Where practicable, staff members responsible for a proposed Procurement Contract should make reasonable efforts to identify potential vendors in addition to those identified through the Contract Reporter. This may be done by obtaining referrals from other governmental entities that may have similar requirements, reviewing reference directories, mailing solicitation materials to industry associations and/or known vendors and mailing to lists of appropriate minority and women-owned business maintained by ESD's Office of Contractor & Supplier Diversity.

8.10. Selection Criteria

Written selection criteria shall generally be established for each proposed Procurement Contract and shall be included in any written solicitation materials. The relative weighting of the selection criteria should be set out in the RFP wherever practicable and, in the absence of written weighting, each criterion shall be deemed to have the same weight.

The selection criteria shall generally include price as an important factor to be considered in the selection process; however many JDA procurements are based on "Best Value," which allows for factors other than price to be taken into account. Such factors commonly include the quality of goods and services, the experience of the vendor and specific expertise with respect to the goods or services to be supplied. See also Section 7.1 above if price is weighted at less than 20%.

8.11. Bid Opening Procedures

All proposals should be received by the Procurement Department (unless the Procurements Manager directs otherwise), and immediately should be stamped with the date and time of receipt. **Do not open any bid packages for any reason before the formal bid opening.** JDA staff members representing Contracts Administration, Procurements, Legal and the initiating Department should be present at bid openings in person or by teleconference. Bids shall be opened by the Procurement Manager or his/her designee, and the time and date of receipt shall be entered into the Bid Log, which must be signed by all staff members present. Teleconference participants must confirm their presence by email to the Procurements Manager. The Bid Log shall also record the presence of SFL 139j-k and ST-220 forms in the bid.

A Public Bid Opening is required for Public Works contract solicitations, pursuant to State Finance Law § 144. This section generally covers bids for construction work on public projects, and may include preparatory work such as demolition, asbestos abatement and the like. JDA must be a party to the contract, which must involve the use of laborers, mechanics or workers (not, for example, architects and engineers). The definition of a "Public Work" is more a matter

of art than law: if in doubt as to whether the contract is for Public Work, contact the Legal Department for guidance.

8.12. Bid Evaluation and Vendor Selection

The initiating Department Head should establish, prior to bid opening, a team of at least three JDA/ESD staff members with relevant knowledge and experience of the goods and/or services being procured. One member should come from Contracts Administration or Finance. In some cases, one or more non-JDA/ESD team members may join the review team, where those persons have specific knowledge of the procurement subject, or a specific role to play in the administration of the contract with the successful bidder. This involvement of non-JDA/ESD persons is appropriate because § 2824 (1) of the Public Authorities Law permits authorities such as JDA to “take into consideration the views and policies of any elected official or body, or other person” in the exercise of its powers and duties, provided that JDA must “apply independent judgment in the best interest of the authority, its mission and the public.” If non-JDA/ESD staff is included in the review team, the team must be expanded in number such that a majority will always be JDA/ESD staff members.

Analysis of the proposals and/or bids submitted and the award of the contract shall be documented in reasonable detail. Award to anyone other than the low bidder must include in the documentation the reason the low bidder was not selected.

In reviewing bids, all members of the team must complete and sign scoring sheets that rate each bidder according to the selection criteria and weighting set out in the RFP. Scoring sheets must not include anything other than numerical ratings (i.e., no comments/opinions/notes, etc). Original scoring sheets must be signed and retained by the Procurements Manager as part of the Procurement Record.

8.13. Determination of Responsibility – “FLIP Review” and the Vendrep form

Pursuant to State Finance Law § 163, the Board must determine that a vendor or respondent is a responsible contractor, prior to approving the award of a contract. In any event, whether or not a formal Determination of Responsibility is sought from the relevant Board, the initiator should ensure that all vendors are “responsible.”

Vendor responsibility is generally accomplished by “FLIP” review. FLIP review involves assessment of four factors: (i) Financial and organizational capacity; (ii) Legal authority to do business in the state; (iii) Integrity of the owners/officers/principals; and (iv) Past performance on prior government contracts.

The Office of the State Controller has developed a useful resource, the VENDREP form, that should be used wherever possible. This form seeks information about the vendor, its affiliates and subsidiaries, officers and owners, past responsibility determinations by agencies and investigations/prosecutions. It must be notarized, and false statements may be actionable and in some cases may be criminal. The Vendrep forms can be accessed here: www.osc.state.ny.us/vendrep/webresources.htm. See also Section 8.3 above.

For more information, including links to forms used in a determination of responsibility, see Best Practices on the OGS website. Note that FLIP review is not needed for procurements from the OGS Centralized Contracts list.

If a vendor is considered to be non-responsible, steps must be taken to afford the vendor due process rights, including an opportunity to explain its position in writing and, in some cases, at a meeting. Consult the Legal Department in such cases, after having reviewed the information at www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf.

8.14. Procurement Record

The department head or his or her designee shall be responsible for creating and maintaining a record of the procurement process. Such record shall contain documentation related to the procurement process, any competitive solicitation exemption, proposals and/or bids received, scoring sheets, vendor responsibility documentation and other documents prepared or used by the bid reviewers in their vendor selection process. Note that final scoring sheets must be sent to the Procurements Manager before a contract is executed.

9. Contract Approval

Procurement Contracts in amounts of **\$250,000** and under that will be completed within one year (for services contracts) must be approved by the Officer(s) specified in Attachment A to these Guidelines. Board approval is not required for these contracts.

Procurement Contracts priced at over **\$250,000**, as well as contracts for any amount involving personal services to be rendered over a period in excess of one year, must be approved by the Board.

Note that **warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases)** are not considered personal service contracts and do not require approval by the Board unless the amount of the contract is over \$250,000 in aggregate through its term.

9.1. Board Materials

The initiator writes a memorandum from the respective Department Head to the Officer(s) specified in Attachment A to these Guidelines, explaining the need for the contract. View Model Members' Materials for Procurement Contracts.

The Board materials must set out:

- a. the need for goods and services;
- b. a brief description of the goods or services needed;
- c. the expected maximum cost of the proposed goods or services;

- d. the selection process used to determine an award based on best value, or where not quantifiable, the justification which demonstrates the best value will be achieved; and
- e. The funding source.

9.2. JDA Contract and Amendment Approval

- a. Contracts in amounts \$250,000 and under must be approved by the Officer(s) specified in Attachment A to these Guidelines.
- b. Contracts (i) in amounts over \$250,000 or (ii) contracts for any amount involving services to be rendered over a period in excess of one year must be approved by the Board.
- c. If staff anticipates that a contract may need to be extended beyond one year, ensure that Board approval is requested and that the materials and resolution specifically permit an extension of the contract. Once Board approval is obtained, the contract with the vendor must contain a clause that specifically permits extension. If the contract does not contain such a clause, and the contract needs to be extended, Contract Reporter advertising is required unless an exemption is granted.
- d. Contracts for services to be rendered over a period in excess of one year, regardless of the amount of the contract, which must have been approved by the Board, must in addition be reviewed annually by the Board, pursuant to Public Authorities Law § 2879.3(b)(ii). The initiating Department Head must provide an annual report setting forth the status of all continuing services contracts, together with justification for the continuance of such contracts for the next year. This annual status report can be made to Contracts Administration by filling out a contract summary/contract status report. The annual status reports will thus serve to clarify the need to continue existing multi-year service provider contracts. Note also that warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases) are not considered personal service contracts.
- e. Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head it is essential that work on the contract be commenced before the formal contract documents have been approved, the JDA President & Chief Executive Officer, Executive Vice President & Chief Operating Officer, General Counsel or Chief Financial Officer, Treasurer or Controller may issue a letter authorizing a contractor to commence work pending completion and execution of formal contract documents (“**Notice to Proceed**”), provided that:

- i. the contract is not subject to Office of the State Comptroller (“OSC”) approval (See Section 10.5); and
- ii. the authorization contained in the Notice to Proceed is \$250,000 or less; and

the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Contract Administration and Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of two of the following: JDA President & Chief Executive Officer, Executive Vice President & Chief Operating Officer, General Counsel, Chief Financial Officer, Treasurer or Controller.

f. **Amendments to existing contracts** follow the same process as new contracts, i.e., the amendment needs to be advertised in the New York State Contract Reporter or exempted. The same documents, such as justification memo/contract status report, commitment request form and/or standard amendment form must be generated. If the proposed amendment will involve a new Contract Reporter advertisement or other solicitation, the requirements of SFL §139-j and 139-k and State Tax Law § 5-a will apply, and in any case, new certifications may be required. Note that an amendment to an existing contract that causes the aggregate amount of the contract to exceed \$1 million may be subject to OSC approval, regardless of the amount of the amendment and source of funds.

g. Contract amendments that increase the contract amount to more than \$250,000 must be approved by the Board. Amendments for less than 10% of the original contract amount (or the contract amount as subsequently approved by the Board) may be executed by the JDA Chief Executive Officer or Chief Financial Officer without further Board approval, unless the amendment increases the contract to an amount above \$250,000 and the Board’s approval has not been previously obtained. An Amendment Package must be sent to Contracts Administration for approval and processing (see Commitment Request Package on the next page for guidance). If a proposed amendment will increase the term of the contract to more than one year, Contract Reporter advertising is necessary unless, as discussed in paragraph (c) above, the original contract contained a clause specifically permitting extension.

In the case of contracts for more than \$1 million, where the initiator anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount, Board approval should be sought from the outset for amendment of the contract up to 10% of the amount approved, to be executed without further Board approval by the Chief Executive Officer and the Chief Financial Officer of JDA. Note that such an amendment may

require OSC review and approval (see section 10.5). If in doubt, consult the Legal Department.

10. Steps After Contract Approval Is Obtained

10.1. Commitment Request Package

- a. For contracts of \$50,000 or more, the contract initiator completes the required information on the Commitment Request Form.
- b. The contract initiator completes the Standard Form Contract - Short Form for Goods/Services or Standard Form Amendment or Modification of Contract.

Remember that the provisions and the requirements of the proposed contract must be specific and stated in clear and unambiguous terms so they are fully understood by the contracting parties. It is important that the contract clearly specify what is expected of both the contractor and JDA, and the method of payment to the contractor. The more clear and specific the contract, the easier it will be to monitor.

The terms of the contract should include, but not be limited to:

- the scope and purpose of the contract;
 - the description of the services to be performed;
 - the location where the work is to be performed;
 - the standards to be used to measure performance (e.g. units of services, number and nature of clients served, target dates, etc.);
 - the level of expertise that is required to perform the tasks, the cost and the method payment of the contract;
 - the projected starting date and the contract period;
 - the finished product or the services to be delivered;
 - record-keeping and reporting requirements, including a statement that JDA and any relevant State agency has the right to audit the contractor's records;
- c. Written explanation of the responsibility determination/FLIP Review and/or formal Determination of Responsibility, where required.
 - d. Board approval, if applicable. View sample Board materials.
 - e. New York State Contract Reporter Form, approved exemption letter, or NYS OGS Centralized Contract.
 - f. All appropriate insurance certificates, as approved by the JDA Insurance Administrator, a copy of the appropriate officer's approval and a copy of

the RFP, if applicable. Note that all contractors must have evidence of Workers' Compensation and Disability Insurance coverage.

- g. Three (3) original sets of the contract package or amendment with: (i) Schedule A (conditions applicable to consultant or legal agreements); (ii) Schedule B (scope of work and compensation terms); (iii) Schedule C (Non-Discrimination and Affirmative Action Provisions and Schedule of Minority/Women Business Participation and Compliance with Executive Law Article 15-A); (iv) Schedule D (ST-220 Contractor Certification Form pursuant to Tax Law § 5-a); (v) Schedules E-1 (Compliance with SFL § 139-j and 139-k, the Offerer's Affirmation of Understanding and Agreement pursuant to SFL §' 139-j (3) and 60 (b), the Offerer Disclosure of Prior Non-Responsibility Determinations under SFL § 139-k(2); and (vi) the Encouragement of NY sub-contractors and suppliers form.
- h. The initiator signs and obtains the Department head approval on the Commitment Request form and forwards the commitment package (all documents listed above) to Procurement for compliance review and approval. When approved, Procurement will route the commitment package to Contract Administration. The commitment package must be accompanied by a completed Commitment Package Checklist.
- i. Contract Administration routes and tracks the commitment package and obtains necessary approvals from various departments.
- j. Upon obtaining in-house approvals, Contract Administration sends all three (3) sets of the contract or amendment package to the vendor for signature(s).
- k. After receiving three (3) signed sets from the vendor, Contract Administration sends all three sets to the Officer(s) specified in Attachment A to these Guidelines for signature.
- l. One original copy of the fully-executed contract is sent by Contract Administration to the vendor.

10.2. Contract Reporter Award Notification

A contract is considered awarded when it is executed (signed) by all parties. If a contract is awarded after a Contract Reporter Solicitation, the award, along with the Schedule of Minority/Women Business Participation, must be posted on the Contract Reporter system. This posting will be done by Contracts Administration.

10.3. Extension/Amendment of Contracts

If a Procurement Contract is entered into after a Contract Reporter solicitation, the contract and solicitation can provide that there may be an extension of the contract or amendment to the scope of work. If so, then extensions and/or amendments do not need to be advertised in the Contract Reporter again. However, if the contract requires approval by the Board, the possibility of extension or amendment must be included in the original Board materials and Resolution. When in doubt, provide for extension or amendment to minimize future problems.

10.4. Department of Budget (“DoB”) Approval

Under DOB Bulletin B-1184, approval for certain procurements over \$500 is required. In general, if a state or legislative appropriation is the source of funds, approval is needed. A web-based application known as the “Agency Spending Controls Application” process is used to obtain prior approval. DOB approval is not required when the funding source for the procurement comes from a non-State source (e.g., a developer of an JDA project), where at least 75% of the procurement cost will be reimbursed by federal funds, or when the procurement is needed to address an immediate threat to public health and/or safety. DOB mandated forms are used in cases where approval is required. JDA has implemented the cost control measures described in Bulletin B-1184. All spending not involving Federal reimbursement of at least 75 percent, presenting an immediate threat to public health and/or safety or whose funding source is from a Third Party is subject to the preapproval process specified in the Budget Bulletin utilizing forms established by DOB known as Attachment A. An Attachment B form was also created for spending involving Federal reimbursement of at least 75% or presenting a public health and/or safety issue.

For instructions and forms, see the ESD Employee Intranet: Financial Resources. If in doubt, contact the ESD Controller’s Department for guidance.

10.5. OSC Post-Contract Approval of \$1,000,000+ Contracts

Under Public Authorities Law § 2879-a (effective March 1, 2010), proposed contracts in excess of one million dollars that either: (i) are to be paid for in whole or in part by state appropriations; or (ii) are not to be awarded after a competitive process (regardless of the funding source), must be approved by the Office of the State Comptroller (“OSC”) after the contract is signed. If § 2879-a applies and approval by OSC has not been obtained, the signed contract “shall not be a valid enforceable contract.” OSC has issued final regulations implementing this law, and OSC approval shall be deemed part of these Guidelines. A memorandum explaining the application and procedures involved in OSC approval has been circulated to all relevant staff and may be viewed [here](#).

Note that loan and grant contracts may be covered by the OSC review process.

OSC has confirmed that contracts for the sale of real property for an amount over \$1 million are covered by the Property Disposition Guidelines and are not subject to OSC review and approval under PAL § 2879-a.

11. Monitoring of Procurement Contracts

Performance of Procurement Contracts must be monitored by the initiating Department to ensure that the scope of work or services to be provided are being/have been performed, that use of JDA/ESD personnel, supplies and facilities is documented, and that the established starting and completion dates for major components of the contract are being/have been met.

JDA/ESD employees assigned the responsibility of monitoring the work should be familiar with the type of work being performed and with the specific terms of the contract.

The frequency and manner in which the vendor's performance will be monitored should be clearly stated to the vendor and directly related to the terms of the contract.

Written documentation pertaining to vendor performance, such as progress reports, site visit reports, payment and expenditure data, memoranda of verbal discussions, and written correspondence, should be maintained and reviewed by the initiating Department.

Periodic visits to the work sites should be made where appropriate to review work in progress and work completed. Site visit reports should be completed and include the observations of pertinent matters, such as the number and type of persons employed by the vendor, adequacy of the facilities and equipment, and quality of performance, including any deficiencies in the performance of the work, which may have an impact on satisfactory completion of the project.

The evaluation of the vendor's performance should take into consideration the quantity and quality of the work performed, the timeliness of submission of contract deliverables, the adequacy of cost and performance records and other supporting documentation, and whether the extent of performance, to date, is commensurate with the amount the contractor has been paid.

Performance that is below expectations or established standards should be reported to JDA management immediately. All deficiency reports should be specific and in writing. Management should review deficiency reports and take appropriate action, which may include termination of a contract.

All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head. No payment should be made unless the work is satisfactory and in accordance with the terms of the contract. Approval on the Payment Authorization form attests to this.

12. Procurement Contracts Involving Former Officers of JDA/ESD

JDA shall not enter into Procurement Contracts with its or ESD's former officers or employees, or with firms employing such officers or employees, except as permitted by applicable provisions of law and by ESD's "Guidelines Regarding Conflicts of Interest and Ethical Standards.

13. Implementation of These Guidelines

ESD's Legal Department, in conjunction with the Procurement/Contract Administration Department, shall be responsible for:

- a. Preparing for approval by the CEO such supplemental procedures as may be required to effectively implement these Guidelines.
- b. Preparing proposed amendments to the Guidelines for approval by the CEO and the Board when and as required.

14. Reporting

14.1. Quarterly Reports

ESD's VP/Contract Administration shall prepare for presentation by the Office of Contractor and Supplier Diversity to the Board, quarterly reports of new and amended Procurement Contracts and required Schedules of MWBE Participation. For each Procurement Contract, the report shall include the contract amount, reason for award, initial scope of services and the selection process used. Such reports shall include information related to amendments approved on contracts during the reporting period.

14.2. Annual Reports

Annually, ESD's VP/Contract Administration shall prepare for the Board's review a report on Procurement Contracts as of the end of each fiscal year, summarizing procurement activity by JDA for the period of the report, including a listing of all contracts entered into, the selection process used to select vendors, the status of existing Procurement Contracts and required Schedules of MWBE Participation. ESD's VP/Contract Administration shall also prepare, on an annual basis, a report for submission to:

- a. The Division of Budget;
- b. The Department of Audit and Control;
- c. The Senate Finance Committee;
- d. The Assembly Ways and Means Committee;
- e. Members of the public (upon receipt of reasonable requests therefor); and
- f. The Commissioner of Economic Development.

The reports shall include these Guidelines, any amendments thereto, and an explanation of the amendments.

15. Effect on Awarded Contracts

Nothing contained in these 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, these Guidelines. These Guidelines reflect best and customary practice, but are not intended to be rules of law. Note, however, that certain contracts may not be “valid or enforceable” without OSC approval. (See Section 10.5)



DATE: April 25, 2016

TO: The Members

FROM: Howard Zemsky

SUBJECT: Hauppauge (Long Island Region – Suffolk County) – JDA Loan for the Benefit of Precare Corporation - Authorization to Make a Loan with New York Job Development Authority Proceeds and Take Related Actions

JDA Loan Terms (Real Estate)					
Borrower:	NS Marcus Blvd LLC (a subsidiary of Precare Corporation)				
Economic Region:	Long Island				
Loan Amount Requested:	\$3,120,000				
Rate:	3.99% (fixed)				
Term:	20 years				
Classification:	IA+				
Distressed Area:	No				
Initial Payment:	\$18,890.15				
JDA Project Budget (Real Estate)					
<u>Uses</u>			<u>Sources</u>		
Real Estate Acquisition	\$7,326,000	94%	Bank of America	\$3,900,000	50%
Renovation	350,000	4%	JDA Loan*	3,120,000	40%
Soft Costs	124,000	2%	Equity	780,000	10%
Total Project Cost	\$7,800,000		Total Project Financing	\$7,800,000	
*20-year term at 3.99% fixed apr with second collateral mortgage on RE					

Security: The JDA Loan shall be secured by a second lien on the property located at 150 Marcus Blvd., Hauppauge, NY 11788.

Guarantors: Repayment of the JDA Loan shall be guaranteed by Precare Corporation, Premier Care Industries, Inc., Precare LLC, Shirian Precare LLC, and the personal guarantees of Ouri Neman, Matthew Neman, Michael Neman, Albert Shirian, Ramin Shirian, and Romina Shirian.

Existing Jobs: 80 full-time

New Jobs Projected: 35 full-time by five years after loan disbursement

JDA Loan Amount per job: \$27,130

Project Summary:

Borrower: NS Marcus Blvd LLC (a subsidiary of Precare Corporation)
100 Oser Avenue
Hauppauge, NY 11788

Contact: Ouri Neman, President
Phone: 631-667-1055

Ownership: Precare Corporation is owned by two entities:
Precare LLC 65%
Shirian Precare LLC (Silent partner) 35%

Precare LLC has 3 members
Ouri Neman 55%
Matthew Neman 22.50%
Michael Neman 22.50%

Shirian Precare LLC has 3 members as well
Albert Shirian 33.3%
Ramin Shirian 33.33%
Romina Sasson 33.33%

NS Marcus Blvd LLC is a single purpose entity recently opened to own the 150 Marcus Blvd property. It is owned by all members that own Precare Corporation in the same percentages laid out above.

Nature of Business: Precare Corporation manufactures disposable personal hygiene products such as wet wipes, feminine hygiene products, infant care wipes, adult incontinence products, etc.

This report concerns a proposed New York Job Development Authority ("JDA") loan for the amount of \$3,120,000 (the "JDA Loan"). The JDA Loan will be used to take out a portion of a Real Estate loan to be provided by a participating bank for the acquisition and renovation of a facility located in Hauppauge, New York. The total cost of the Real Estate Project is \$7,800,000 (the "Project Cost").

Project location: 150 Marcus Blvd. Hauppauge, NY 11788

Project Completion: Second Quarter 2016

1) PROJECT OVERVIEW AND RECOMMENDATION

a) Background

Precare Corporation dba Premier Care Industries (“Precare” or the “Company”) is an industry leader in branded and private label hygiene products. It was founded in 1997 by Ouri Neman. From its original headquarters in Winnipeg, Canada, Precare serviced the United States and Canadian marketplace with feminine maxi pads and liners under the brand names Bodyform and Sanitex and manufactured store-brand maxi pads for leading North American retailers.

PREMIER CARE INDUSTRIES

Private Label Opportunities

Premier Care Industries combines state-of-the-art wet wipe manufacturing technology, innovation, and scientific knowledge to the development of products that meet our customers’ needs.



Baby Diapers Huggies® & Pampers® Comparable Wipes Sensitive Baby Wipes Value and Economy Wipes Toddler Wipes	Automotive Cleaning Wipes Leather Wipes Glass Wipes Ultra-Shine Wipes Insect Removal Wipes
Incontinence Adult Briefs Adult Pull-Ups Underpads Cleansing Cloths & Wipes	Antibacterial/ Hand Sanitizer Spray Cards Wipe Canisters Individual Wipes
Feminine Hygiene Maxi Pads Panty Liners Tampons Personal Cleansing Cloths	Household Wet Floor Wipes Disinfecting Wipes All-Purpose Cleaning Wipes Furniture Polish Wipes Glass Cleaner Wipes Multi-Surface Wipes
Pet Cleansing Wipes Ear & Eye Wipes Anti-Shedding Wipes Pet Wipes To-Go	Miscellaneous Lens Cleaner Wipes Sanitizing Wipes
Beauty Makeup Remover Wipes Cleansing Facial Wipes Exfoliating Facial Wipes Beauty Cleansing Cloths	

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In 2003, Precare introduced Flush-a-Way, the first flushable, biodegradable panty liners and sanitary napkins. The proprietary technology offered an alternative for national retail chains interested in promoting earth-friendly products.

Precare expanded efforts in 2005 and relocated its manufacturing and distribution center to Asia. This significantly enhanced its global platform, allowing it to provide its clients with competitive technology and costs.

With advanced improvements in feminine hygiene products and plans to expand the Company’s offerings, Precare relocated to Long Island, NY in 2006 to increase U.S. marketing efforts and provide a range of products including baby diapers and wipes, adult incontinence products, and hand sanitizers.

Plans were initiated in 2010 for a state-of-the-art manufacturing operation in its production facility in Hauppauge, NY to

service the marketplace with premium-quality wet wipes. In addition to the cutting-edge production capabilities, the Company has staffed its operations with industry experts from companies like Burt’s Bees, Este Lauder, Watson Pharmaceuticals, Forest Labs, BASF, and Rostam US.

With the introduction in 2011 of its advanced capabilities, Precare continues a commitment to setting the highest standards in quality manufacturing throughout the hygiene industry.

In 2015 Precare acquired three new major accounts from CVS, Babyganics, and Gojo ("Purell" brand sanitizing wipes) to manufacture private label products. The Company has contractual agreements with all of its major clients that generally last for 2-3 years with extension options. The Company also recently renewed a 7-year contract to produce Meguiar's Quik Interior Detailer Wipes (for automotive interiors) for a 3M subsidiary, and a 6-year contract with the Giant Eagle supermarket chain to produce kitchen sanitizer wipes and baby wipes.

In January 2014, Precare was offered \$300K in Excelsior tax credits by ESD to create 23 net new jobs by June of 2016. As of August 2015, the Company had already met the goal. In March of 2016, the Suffolk County IDA approved a tax inducement for the Company.

b) Project Description

The Company's main building is a 28,000 square foot office, manufacturing, and warehouse space located at 100 Oser Avenue in the Hauppauge Industrial Park, and it currently also operates out of two leased properties in the same area, at 110 Oser Avenue (15,000 square feet of storage) and at 400 Wireless Blvd (32,000 square feet of storage). Precare has identified a building at 150 Marcus Boulevard, less than 1/3 mile from its main building, that it is planning to purchase and consolidate the operations from the two currently leased buildings. The large industrial building, which covers 80,899 square feet, was previously occupied by electronics company Audiovox. The building will cost \$7.326MM, and Precare is planning on spending an additional \$124K in soft costs and \$350K in costs to renovate the building to its specifications. The project plans to utilize \$3.9MM in bank financing, a \$3.12MM JDA loan, and \$780K in equity investments to fund the building acquisition and renovation.

Consolidating its operations at its headquarters and at the new building will allow the Company to make long-term investments in improvements to its manufacturing, packaging, and shipping systems. It will allow Precare to better manage its rapid growth with the acquisition of more private label contracts. It will also replace onerous lease payments (totaling \$420K/annually) with mortgage payments to build equity.

c) Conclusions

- Based on the IA+ rating, the Company currently generates sufficient cash flow from operations to service all the projected project debt, and staff believes that the Company is fiscally strong.
- With the approval of the project, JDA would facilitate the maintenance of 80 manufacturing jobs, as well as the creation of 35 new jobs over a five year period.

2) COVENANTS AND CONDITIONS

The JDA Loan is predicated upon the following financial conditions:

- The Company must obtain firm commitments satisfactory to JDA from responsible financial sources for the total project cost exclusive of any loan requested from JDA.
- The Company must maintain a minimum debt service coverage ratio of 1.20 throughout the term of the loans.
- The lead bank must provide an appraisal of the subject property (150 Marcus Blvd., Hauppauge, NY 11788) that indicates a loan to value not to exceed 90% at the time of closing.
- The Company must meet all other standard JDA requirements as follows:
 - a. Completion of the Real Estate Project to the satisfaction of JDA, as evidenced by a certificate of occupancy and such other certification (including environmental approvals) required for the Facility to be used for the purposes intended.
 - b. Execution and delivery of the Note, the Security Agreement, the Mortgage and Loan and Use Agreement (furnished by JDA), and related documents by the Company, all satisfactory to JDA.
 - c. Procurement by the Company of funds which shall be used at or prior to the closing to pay the Real Estate Project Cost, exclusive of the proceeds of the Loan.
 - d. Receipt by JDA of policies of insurance, including flood insurance if required, in amount, form and substance and issued by companies satisfactory to JDA.
 - e. Receipt by JDA of an itemized statement of Real Estate Project Cost, satisfactory to JDA.
 - f. Receipt by JDA of financing documents of other lender(s) satisfactory to JDA.
 - g. Satisfaction of such other conditions as JDA, with advice of counsel, deems necessary or advisable to effectuate the Loan, secure the interest of JDA and insure compliance with the JDA Statute and applicable provisions of the Internal Revenue Code.
 - h. Execution of documents to permit monthly electronic debit of the Company's checking account to repay the Loan.
 - i. Compliance with ADDITIONAL REQUIREMENTS stipulated in all Schedules, Exhibits and Riders, attached hereto and made a part hereof.
 - j. Compliance with any other terms and conditions deemed to be necessary and appropriate in the opinion of the General Counsel of JDA.
 - k. The Company or the Company's owners will contribute at least 10% in equity to the Real Estate Project. Equity is defined as any non-debt source of capital and should be auditable through the Company's financial statements or accounts, if so requested by JDA.

- l. Subordination of any loans to the Company from those certain officers and members of the Company stipulated herein in a manner satisfactory to JDA.
- m. The Company shall not enter into any agreement by which the terms of payment of any principal or interest under any other bank loan are waived, modified, deferred, delayed, increased or reduced in rate or amount, without the prior written consent of JDA.
- n. All certifications and permits for the operating purposes of the Facility to be in full force and effect prior to closing the Loan.
- o. Subordination of any leases which may affect the Facility to the Mortgage.

3) ADDITIONAL MORTGAGE AND LIEN DETAILS

Promissory notes in the principal amount of the Real Estate Loan, with interest thereon (the "Note"), shall be secured by a mortgage to JDA (the "Mortgage") on the premises located at 150 Marcus Blvd, Hauppauge, NY 11788.

The Mortgage may be junior to the liens of the principal bank, but not to any modifications, extensions or renewals thereof. The Bank Mortgage shall not be collateral security for any other loans.

4) ENVIRONMENTAL REVIEW

ESD staff on behalf of the JDA has determined that the project constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project.

Due to the JDA's mortgage position on the loan, a Phase I Environmental Site Assessment must be submitted to the JDA for review and approval prior to closing on the loan.

5) NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, JDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified Minority and Women-owned Business Enterprises ("MWBES") in the performance of the Corporation's contracts. JDA's Non-Discrimination and Contractor & Supplier Diversity policy will apply to this initiative.

6) ADDITIONAL SUBMISSIONS

Resolutions
New York State Map
JDA Loan Underwriting Classification System
Photos/Diagrams

April 25, 2016

NEW YORK JOB DEVELOPMENT AUTHORITY – Hauppauge (Long Island Region – Suffolk County) – JDA Loan for the Benefit of Precare Corporation - Authorization to Make Loans with New York Job Development Authority Proceeds and Take Related Actions

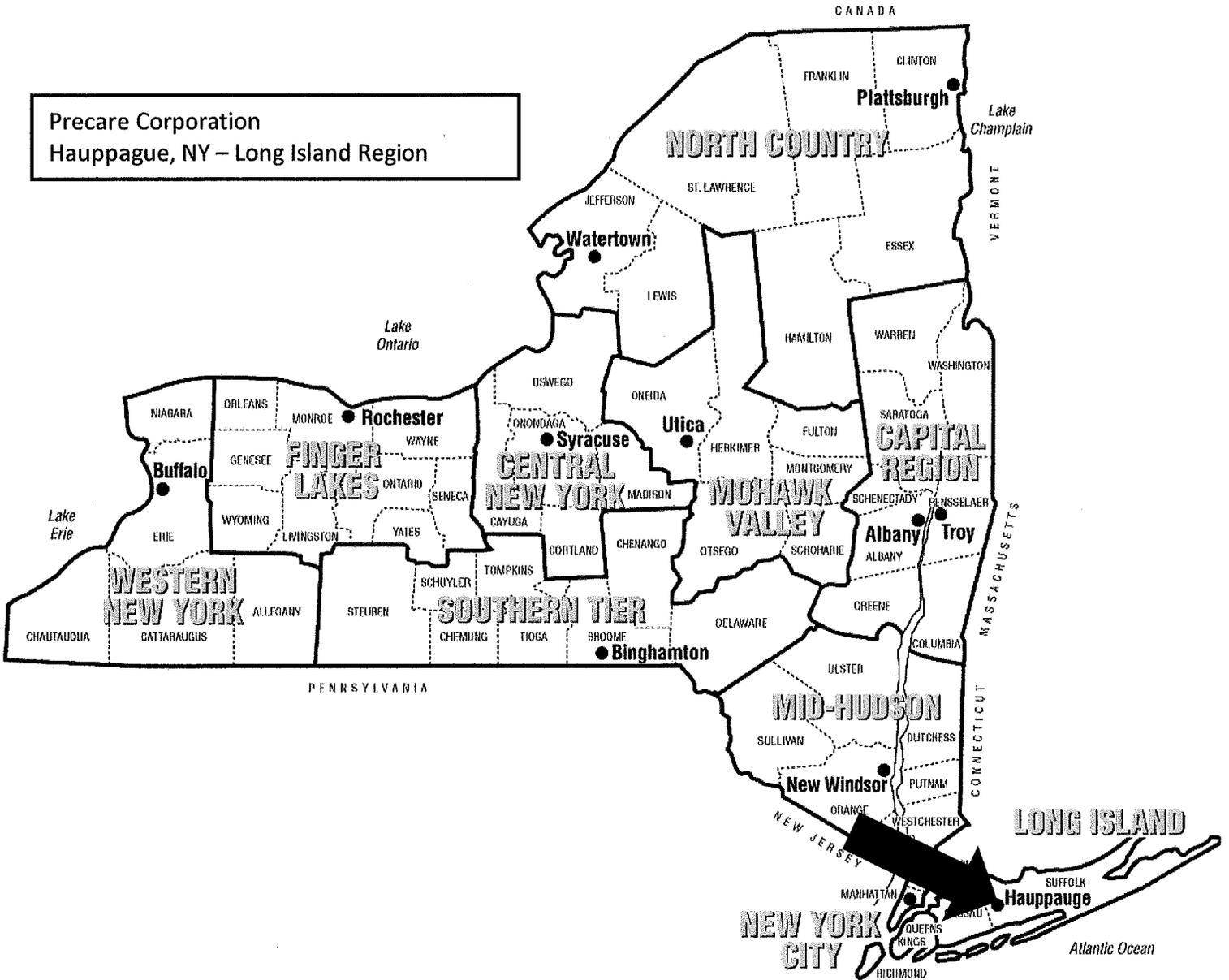
RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Special Purpose Fund Real Estate Loan to Statewide Local Development Corporation for the benefit of Precare Corporation for an amount not to exceed \$3,120,000 or 40% of the total real estate project cost, whichever is less, to be funded from the proceeds of New York State Guaranteed Special Purpose Fund bonds or notes, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, subsequent to the making of the Loans, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the Loans as he or she may deem appropriate in the administration of the Loans; and be it further

RESOLVED, that the Chief Executive Officer of the Authority, or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions; and be it further

RESOLVED, that the provision of financial assistance by the Authority is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals.

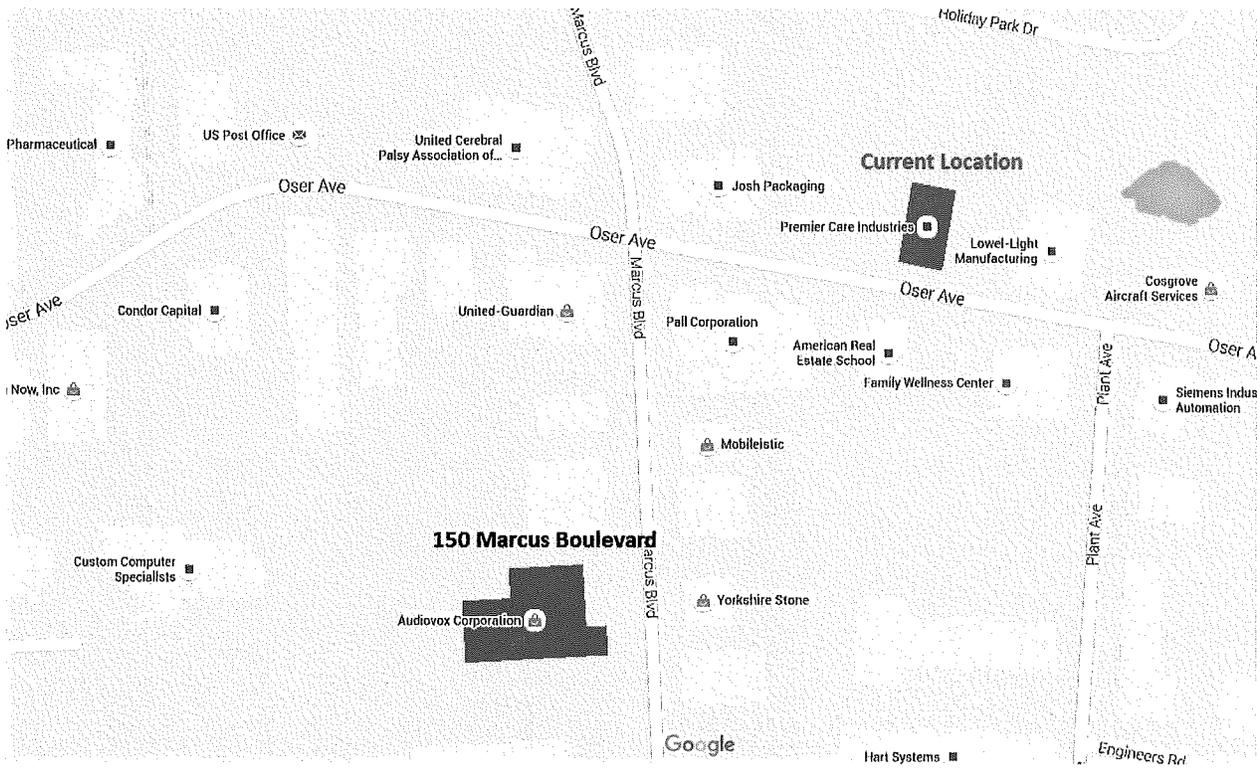
Precare Corporation
Hauppauge, NY – Long Island Region



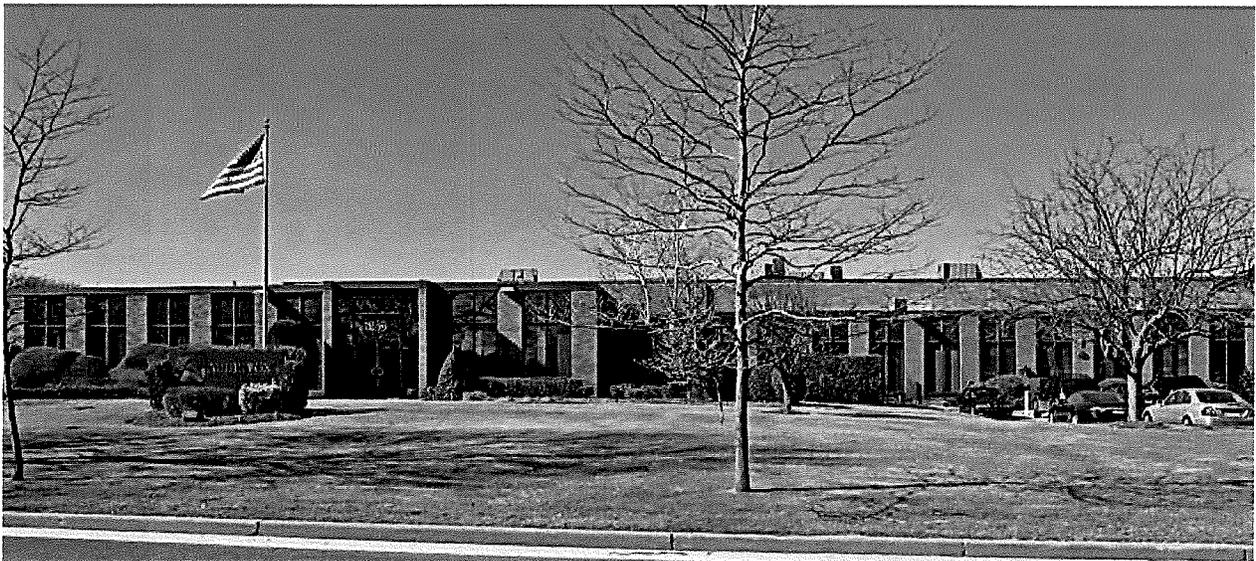
JDA Underwriting Classification Chart

Level I: Cash Flow	Level II: Default Risk	Level III: Collateral Value
I Actual or Adjusted Debt Service Coverage \geq 1.2:1	A Score of \geq 4 on the Default Risk Model Low Risk	Liquid value of collateral + adjusted value of personal guarantee \geq total loan value
II Actual or Adjusted Debt Service Coverage $<$ 1.2:1, but with Projected Debt Service Coverage \geq 1.2:1	B Score of 3 on the Default Risk Model Moderate Risk	Liquid value of collateral+ adjusted value of personal guarantee $<$ total loan value
	C Score of \leq 2 on the Default Risk Model Higher Risk	

Photos/Diagrams



150 Marcus Blvd.



Photos of Precare Products

