



NEW YORK
STATE OF
OPPORTUNITY™

**Thruway
Authority**



*GOVERNANCE COMMITTEE MEETING NO. 35 MONDAY
MARCH 27, 2022
ALBANY, NEW YORK*



**Thruway
Authority**

GOVERNANCE COMMITTEE AGENDA

Meeting No. 35
March 27, 2023
Albany, New York

1. Approval of Minutes of Governance Committee Meeting No. 34
2. Amending the Thruway Authority's Bylaws
3. Review and Approval of Real Property Management Policy, Personal Property Disposal Policy, Procurement Contracts Policy, Whistleblower Policy, Code of Ethics Governing Employees, and Code of Ethics Governing Board Members
4. Other Business
5. Adjournment

TO: The Governance Committee

DATE: March 27, 2023

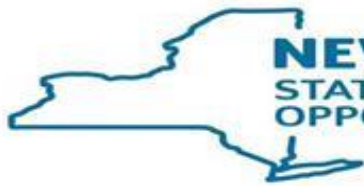
FROM: Tanya M. Morris
Secretary to Board

SUBJECT: Approval of Minutes of Committee Meeting No. 34

Copies of the Minutes of Committee Meeting No. 34 were made available to the Committee Members as part of the Agenda.

RECOMMENDATION

It is recommended that the Minutes of Committee Meeting No. 34, held on December 5, 2022 be approved by the Committee.



**NEW YORK
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MINUTES

GOVERNANCE COMMITTEE MEETING NO. 34

200 Southern Boulevard

Albany, New York

December 5, 2022

Meeting minutes of the Governance Committee, was held at 200 Southern Boulevard, Albany, New York.

The following committee members were present:

Joanne M. Mahoney, Chair

Robert Megna, Vice-Chair

Jose Holguin-Veras, Ph.D., Board Member

Heather Briccetti Mulligan, Board Member

Constituting a majority of the members of the Thruway Authority Board.

Staff were present:

Matthew J. Driscoll, Executive Director

Matthew Trapasso, Chief of Staff

Matt Howard, Treasurer and Chief Financial Officer

Richard Lee, Chief Engineer

Joe Igoe, Deputy General Counsel

Jennifer Givner, Director of Media Relations & Communications

Mary Boehm, Director, Audit & Management Services

Andrew Trombley, Director of Contracts & Procurement Services

Diana Neboilo, Director of Revenue Management

Josh Klemm, Chief Information Officer

Erica Beardsley, Director of Center of Excellence

Sean Lasher, Information Technology Specialist

Peter Nilsson, Information Technology Specialist

Tanya Morris, Board Secretary

The current membership of the Committee is Stephen Saland as Chair of the Committee, Jose Holguin-Veras, Ph.D. and Chair Mahoney serves in the ex-officio capacity. Steve Saland was unable to attend so Heather Briccelli Mulligan ad hoc Member. The Governance Committee began at 12:07 p.m.

Ms. Morris recorded the minutes as contained herein (public notice of the meeting had been given).

Item 1

Approval of Minutes of the Governance Committee Meeting No. 33

Upon motion duly made and seconded, the Governance Committee approved the minutes of the previous meeting held on March 28, 2022.

Item 2

Update to the Procurement Contracts Policy: Discretionary Purchases from M/WBE and SDVOB Businesses

Mr. Trombley presented the Item. Copies of the policy were provided to the Committee Members and are maintained in Authority records. Details of the Committee Members discussion with staff are included in the video recording of and maintained by the Authority.

Upon motion duly made and seconded, the Governance Committee approved the Update to the Procurement Contracts Policy: Discretionary Purchases from M/WBE and SDVOB Businesses and authorized their submission to the Authority Board for consideration.

Adjournment

There being no other business to come before the Governance Committee, upon motion duly made and seconded, the meeting was adjourned at 12:10 p.m.

Note: Webcasts, which include dialogue of Authority Board Meeting, are available on the Thruway Authority website 48 hours after such meetings occur and remain on the website for a period of four months.

TO: The Governance Committee

DATE: March 27, 2023

FROM: Joanne M. Mahoney
Chair

SUBJECT: Amending the Thruway Authority Bylaws

It is proposed that the Authority Bylaws be amended to include proposed organizational changes, to provide for authorization of the conduct of remote meetings under extraordinary circumstances consistent with Chapter 56 of the Laws of 2022 and to adopt defense and indemnification provisions for Board members and employees.

Chapter 56 of the Laws of 2022 provides that each public body that wishes to allow for remote attendance by its members at locations that do not allow for in-person physical attendance by the public is required to adopt a resolution that permits remote attendance, and must establish written procedures that set forth what they determine to be “extraordinary circumstances.” The Law includes a non-exhaustive list of examples of such circumstances, “including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting.” The Law also requires “that a minimum number of members are present to fulfill the public body’s quorum requirement in the same physical location or locations where the public can attend.”

The changes to Article IV of Bylaws reflect the provisions of the Law as well as remove the authorization for meetings to be conducted by telephone - the Open Meetings Law allows remote participation by videoconferencing only. Additional changes to Article IV of the Bylaws includes the addition of a “presumption of assent” to facilitate meetings. This will assume all

Board Members have voted in favor of a Board Item unless their objection or recusal is specifically noted in the minutes of the meeting.

Changes to Article V of the Bylaws based on organizational changes include the addition of the Strategic Center of Excellence, Department of Revenue Management, and Department of Procurement Services to the departments of the Authority and the roles and heads of these new departments. These proposed changes are based on the Authority's Vision Forward project to better align the organizational structure and resource allocation with the realities and customer expectations of the 21st century. Additionally, the changes include renaming the title of "Staff" to "Executive Staff" to reflect the supervisory responsibilities of these positions and renaming the head of the Department of Information Technology to Chief Information Officer.

In Article VI, the proposed changes confer the indemnification benefits of Section 18 of the Public Officers Law upon all former and present employees and Board Members. It is common for bylaws to contain an indemnification provision, but currently they are only found in Board resolutions.

All of the changes to the Bylaws were approved by the Governance Committee at its March 27, 2023 meeting and are set forth in track changes format in Exhibit A attached hereto. The Governance Committee recommends that the Board adopt the revised Bylaws with all of these changes incorporated.

RECOMMENDATION:

It is recommended that the Governance Committee approve this item and authorize authority staff to present this item to the Authority Board.

**New York State
Thruway Authority**



BYLAWS

~~April 2010~~ March 2023

**BYLAWS
OF THE
NEW YORK STATE
THRUWAY AUTHORITY**

**Adopted at Thruway Authority
Board Meeting 191 on October 19, 1964**

(As revised ~~April 1, 2010~~ March 27, 2023 by Board Resolution Number ~~5805~~)

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**BYLAWS
OF THE
NEW YORK STATE
THRUWAY AUTHORITY**

**ARTICLE I
THE THRUWAY SYSTEM**

- A. **The Thruway System.** The facilities under the jurisdiction of the New York State Thruway Authority (hereinafter the "Authority") shall be defined collectively as "the Thruway System."
- B. **Definition of the Thruway System.** Pursuant to Article 2, Title 9, of the Public Authorities Law (hereinafter the "New York State Thruway Authority Act"), the Thruway System shall include the expressway, bridges, shoulders and devices constructed or hereafter constructed in accordance with the New York State Thruway Authority Act, together with the rights-of-way and other lands acquired for such construction or other Thruway purposes, the toll facilities, buildings, restaurants, gasoline stations, equipment, rolling stock and other property of whatsoever kind or nature owned by, or under the jurisdiction of the Authority.

ARTICLE II

OFFICES

- A. **Principal Office.** The principal office of the Authority shall be located at the Administrative Headquarters Building of the Authority, 200 Southern Boulevard, Albany, New York 12209.
- B. **Other Offices.** The Authority shall have such additional offices as the Board, from time to time, may determine by resolution to be necessary or appropriate for the conduct of its operations.

ARTICLE III

THE BOARD

A. **The Board.** Pursuant to the New York State Thruway Authority Act, the governing body of the Authority shall be the Board, which shall consist of seven Members appointed by the Governor by and with the advice and consent of the Senate. The Member designated by the Governor as Chairman of the Authority (hereinafter the "Chair"), shall be the Chair of the Authority until the conclusion of his or her term. The Board is the "appointing authority," as defined in Section 2, subdivision 9, of the Civil Service Law, and shall have the power to appoint and remove Officers, agents and employees and fix their compensation, except to the extent specifically delegated by these Bylaws or by a policy approved by resolution of the Board, provided, however, that the appointment of the Executive Director shall be subject to confirmation by the New York State Senate in accordance with the effective date of Chapter 506 of the Laws of 2009 implementing Public Authorities Law Section 2852. The Chair shall have the power to remove: the Executive Director, after the approval of the Governance Committee and after the approval of the majority of the Board at a duly called meeting of the Board; the Executive Staff of the Authority, upon prior notice to the other Members of the Board; and all other agents and employees of the Authority, except to the extent specifically delegated by the Chair. The Chair shall also have the power to appoint all agents and employees of the Authority except Officers and Executive Staff. In those instances where an individual is both an employee and Officer of the Authority, then the Chair's removal of the individual as an employee shall also terminate such individual's service as an Officer of the Authority. All other powers granted by statute to the Board, unless expressly delegated by these Bylaws or other action of the Board, are reserved unto the Board.

B. **Place, Time and Notice of Meetings.**

1. Meetings of the Board shall be held at least quarterly at such places and times as shall be called by the Chair, upon notice at the time and at the place within the State of New York as shall be specified in such notice, which shall be given to each Member by mailing the same at least seven business days, or by telephone, personal delivery, facsimile or other electronic means of transmitting the same at least three business days, before the time fixed for the meeting. In the event the Chair shall certify that an urgent need exists for a meeting, the Chair may give notice of such meeting by telephone, personal delivery, facsimile or other electronic means of transmission not less than twenty-four hours before the time fixed for the meeting. In lieu of the notice prescribed in this paragraph, a waiver thereof in writing signed by the Member or Members entitled to said notice, whether before or after the time stated therein for the meeting, shall be deemed equivalent to such notice for the purposes of this paragraph. No notice to, or waiver by, any Member with respect to a meeting shall be required if such Member is present at the meeting. Except as provided in Article VIII of the Bylaws with respect to amendments thereof, any and all business may be transacted at any meeting of the Authority.

2. Electronic Participation. ~~Any one or more Members of the Board or any committee thereof, with the prior approval of the Chair, may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation of a Member by such means shall constitute presence in person at a meeting and shall be acknowledged by such Member in a writing appended to the minutes of such meeting upon their acceptance by the Board.~~

A. — Public Attendance.

Any one or more Members of the Board or any committee thereof, with the prior approval

of the Chair, may participate in a meeting of such Board or committee by means of videoconferencing provided the public has an opportunity to attend, listen and observe at any site at which a Member participates.

B. Extraordinary Circumstances Without Public Attendance.

To the extent permitted by the New York State Open Meetings Law, in circumstances where inclement weather conditions or other extraordinary circumstances requiring a reasonable accommodation (including religious, medical, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member's physical attendance at such meeting approved by the Chair) make it not feasible for additional Member(s) to attend a meeting of the Board in person at the location originally designated for the meeting, and where a quorum is or will be present, the Chair may determine that additional Member(s) may participate in the meeting of the Board by means of video conference equipment. In such circumstances, the Chair or the Executive Director, upon the direction of the Chair, may give notice that the Member(s) impacted by the inclement weather conditions or requiring a reasonable accommodation may participate in the meeting of the Board by means of video conference equipment, whereby all persons participating in the meeting can hear and observe each other and all other persons present at each of the designated places of the meeting, and such participation in a meeting via videoconference shall constitute presence in person at such meeting.

The public notice for the meeting shall inform the public: (i) that extraordinary circumstances videoconferencing will (or may) be used, (ii) where the public can view and/or participate in such meeting, (iii) where required documents and records will be

posted or available, and (iv) the physical location(s) for the meeting where the public can attend. The minutes of the meetings involving videoconferencing based on extraordinary circumstances shall include which, if any, members participated by videoconferencing from a private location due to such extraordinary circumstances.

If videoconferencing is used to conduct a meeting, the public shall be provided the opportunity to view such meeting via video, and to participate in proceedings via videoconference in real time. Public comment opportunity shall be the same as in person participation.

Each open portion of any meeting conducted using extraordinary circumstances videoconferencing shall be recorded and such recordings posted or linked on the Authority's website within five business days following the meeting, and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.

C. The in-person participation requirements of shall not apply during a State disaster emergency declared by the Governor pursuant to Executive Law § 28.

- C. **Quorum/Voting**. A majority of the Members of the Board then sitting shall constitute a quorum for the transaction of any business or the exercise of any power or function of the Authority and the Board shall have the power to act by a majority of the Members present at any meeting at which a quorum is in attendance. A member who is participating from a remote location that is not open to in-person physical attendance by the public shall not count toward a quorum but may participate and vote if there is a quorum of members at a physical location(s) open to the public.

A member who is present at a meeting of the Board at which action on any matter is taken shall be presumed to have assented to the action taken unless his abstention or dissent is stated

at the meeting, which dissent or abstention shall be duly entered in the minutes of the meeting.

- D. **Adjournment**. Any meeting of the Board may be adjourned from time to time by the Members present, and no notice shall be required of any adjourned meeting beyond the announcement of such adjournment at the meeting or the adjournment thereof. In the absence of a quorum, any meeting of the Board may be postponed and notice of the new date shall be given in accordance with the provisions of this Article.

ARTICLE IV

OFFICERS, DEPARTMENTS AND EXECUTIVE STAFF

- A. **Officers.** The Officers of the Authority shall be the Chair, the Vice-Chair, the Secretary, the Treasurer and the Executive Director. The Officers of the Authority shall also include such Assistant Secretaries and Assistant Treasurers as the Board may, from time to time, by resolution, name and appoint. Any two or more of such offices, except Chair and Vice-Chair, may be held simultaneously by the same Member of the Board. The office of Executive Director shall not be held by any Member of the Board. The offices of Secretary, Treasurer, Assistant Secretary and Assistant Treasurer may be held by persons other than Members, and any two or more of these offices may be held simultaneously by the same person. The Board may, from time to time, pursuant to the provisions of Public Authorities Law Section 354(6), name and appoint additional Officers, fix their compensation and define their duties.
- B. **Terms of Chair and Members of the Board; Election and Terms of Officers.** The terms of office of the Chair and other Members of the Board shall be as provided in their appointments by the Governor. A resignation by the Chair or other Member shall be submitted to the Governor in accordance with the provisions of the Public Officers Law. Except for the Chair, all Officers, as provided and authorized in this Article of the Bylaws, shall be appointed by the Board and, subject to applicable provisions of the Civil Service Law, if any, shall hold office at the pleasure of the Board; provided, however, that the Executive Director is subject to New York State Senate confirmation and shall serve at the pleasure of the Chair pursuant to Article III(A) of these Bylaws. All Officers, except the Chair, may resign their respective offices at any time by giving written notice thereof to the Board and such resignations shall be governed by the provisions of the Public Officers Law.

A vacancy in any such office shall be filled in the manner prescribed herein for appointment

thereto.

- C. **Departments**. The Departments of the Authority shall be Maintenance and Operations, Engineering, Information Technology, Administrative Services, Finance and Accounts, Legal, Revenue Management, Procurement Services, Strategic Center of Excellence, and Audit and Management Services. The Board may, by resolution, add or abolish Departments.
- D. **Divisions**. For purposes of administration, operation and maintenance, the Thruway System is subdivided into the following Divisions: New York, Albany, Syracuse and Buffalo.
- E. **The Executive Staff**. The Executive Staff of the Authority shall be the Chief of Staff, Chief Engineer, Director of Maintenance and Operations, Director of Administrative Services, General Counsel, Director of Audit and Management Services, Chief Financial Officer, ~~Director of Information Technology~~Chief Information Officer, Director of Procurement Services, Director of Strategic Center of Excellence, Director of Revenue Management, and the Division Directors for New York, Albany, Syracuse, and Buffalo. The Board may, from time to time, pursuant to the provisions of Public Authorities Law Section 354(6), create additional Executive Staff positions, fix their compensation and define their duties.

ARTICLE V
DUTIES OF OFFICERS

- A. **Chair**. The Chair shall set the agenda for, and preside over, all meetings of the Board and is specifically authorized to do the following:
1. Take all steps necessary and proper in the Chair's judgment to carry out the decisions and policies of the Board.
 2. Take all steps necessary and proper in the Chair's judgment to carry out the powers and duties the Board has delegated to the Chair.
 3. Delegate to any Officer, **Executive** Staff member, assistant or employee such of the Chair's duties, powers and functions as the Chair may deem necessary or appropriate; provided, however, that the Chair may revoke any such delegation at any time.
- B. **Vice-Chair**. The Vice-Chair shall be Acting Chair and shall assume and perform all powers and duties of the Chair in the event the office of the Chair is vacant or the Chair is unable to perform such duties by reason of illness, disability or absence.
- C. **Treasurer**. The Treasurer is authorized to sign vouchers, payrolls and requisitions for the disbursement of monies of the Authority from funds of the Authority held by the Comptroller of the State of New York as Agent for the Authority; sign and cosign checks in the name of the Authority for the withdrawal of monies from any bank account held by the Authority; and make and sign statements showing the financial condition of the Authority.

- D. **Secretary**. The Secretary shall: keep the minutes of the meetings of the Board; affix and attest the seal of the Authority; certify copies of Authority papers and records; ensure that all notices of meetings required to be given to Members of the Board are duly given; and ensure that all reports, statements and other documents required by law are properly kept and filed.
- E. **Assistant Treasurer**. The Assistant Treasurer, and if there be more than one, the one so delegated, shall perform such duties as may be assigned by the Treasurer, and shall perform the duties of the Treasurer in the event the office of Treasurer is vacant, or in the event the Treasurer is unable to perform such duties by reason of illness, disability or absence.
- F. **Assistant Secretary**. The Assistant Secretary, and if there be more than one, the one so delegated, shall perform such duties as may be assigned by the Secretary, and shall perform the duties of the Secretary in the event the office of Secretary is vacant, or in the event that the Secretary is unable to perform such duties by reason of illness, disability or absence.
- G. **Executive Director**. The Executive Director, under the supervision of and subject to the directions of the Chair, is the chief executive officer of the Authority and is primarily responsible for the discharge of the administrative functions of the Authority, ~~including~~ the giving of such orders and directives as are necessary for the conduct of the Authority's business. The Executive Director shall attend all meetings of the Board, shall preside at meetings of the **Executive** Staff and shall be a member of all standing and ad hoc committees of the Authority. The Executive Director is hereby designated an Assistant Secretary and an Assistant Treasurer. The Executive Director is specifically authorized to do the following in accordance with the decisions and policies of the Board:

1. Approve the expenditure of Authority funds.

2. Sign documents, releases, conveyances, contracts and agreements in the name of the Authority.
3. Sign vouchers, payrolls and requisitions for the disbursement of monies of the Authority from funds of the Authority held by the Comptroller of the State of New York as Agent for the Authority; sign and cosign checks in the name of the Authority for the withdrawal of monies from any bank account held by the Authority; and make and sign statements showing the financial condition of the Authority.
4. Provide for the prosecution, defense, settlement or compromise of any action, proceeding or claim by or against the Authority, as the case may be, which, in the Executive Director's judgment, is in the best interests of the Authority, provided that the expenditure of Authority funds for such prosecution, defense, settlement or compromise does not exceed \$2.5 million.
5. Delegate to any Executive Staff member, assistant or employee such of the Executive Director's duties, powers and functions as the Executive Director may deem necessary or appropriate; provided, however, that the Executive Director may revoke any such delegation at any time.

ARTICLE VI

FUNCTIONS OF DEPARTMENTS - DUTIES OF EXECUTIVE STAFF

Chief of Staff. The Chief of Staff shall be primarily responsible for overseeing interdepartmental projects and activities, delivering customer service and operational improvements such as ~~traveler~~ customer information, public and community affairs, and administrative analysis. In addition, the Chief of Staff shall perform such duties as may be assigned by the Executive Director.

Departments and Executive Staff:

<u>Department</u>	<u>Function</u>	<u>Department Head</u>
Engineering	Engineering including traffic, design and construction; -development , management and delivery of the Capital program; transportation planning; and environmental services.	Chief Engineer
Maintenance and Operations	Management of Divisions; maintenance of highways, bridges, facilities and equipment; inventory management; toll collection ; traffic management; management of travel plazas <u>service areas</u> ; <u>emergency services</u> and State Police liaison.	Director of Maintenance and Operations
Administrative Services	Personnel administration; labor relations; employee safety and health; training <u>and employee</u> -development ; equal opportunity; and office services.	Director of Administrative Services
Finance and Accounts	Investments, asset management and insurance; accounting and disbursements; fiscal audit; <u>and</u> budget; and purchasing .	Chief Financial Officer

Legal	Legal affairs; <u>real property</u> ; government relations; and advice and counsel to the Authority Board, <u>Executive</u> Staff and employees.	<u>General Counsel</u> General Counsel
Audit and Management Services	Audit and review of administration and operations; management analysis ; information security ; internal controls; liaison with State Inspector General; procurement integrity; and vendor responsibility.	Director of Audit and Management Services
Information <u>Technology</u> <u>Technology</u>	Application and technology Information <u>Officer</u> development; <u>information security</u> -and systems management.	Director of Chief <u>Technology</u>
<u>Procurement Services</u>	<u>Purchasing; Minority and women-Owned business compliance; Service Disabled Veteran Owned Business Compliance; capital contract management</u>	<u>Director of Procurement Services</u>
<u>Strategic Center of Excellence</u> <u>Excellence</u>	<u>Strategic planning, enterprise risk mManagement; project management; cContinuous improvement and analysis</u>	<u>Director of Strategic Center of Excellence</u>
<u>Revenue Management</u>	<u>Toll collection operations; E-Zpass customer Service; commercial operator services; revenue management</u>	<u>Director of Revenue Management</u>

ARTICLE VII
MISCELLANEOUS

- A. **Seal.** The official seal of the Authority shall be a design bearing the outline of the map of the State of New York and generally indicating the route of the Thruway and bearing the words "New York State Thruway Authority" around the circumference thereof. The Secretary shall be the custodian of the seal.
- B. **Fiscal Year.** The fiscal year of the Authority shall commence on the 1st day of January in each year and shall end on the 31st day of December in each year.
- C. **Service of Process and Papers.** The General Counsel is authorized to receive service of legal process and all papers of a similar nature or import.
- D. **Committees.** There shall be an Audit Committee, a Governance Committee and a Finance Committee, the membership of which shall be comprised of Members of the Board. The Chair or Executive Director may appoint such ad hoc committees as may be necessary for the efficient management of the Authority and designate the membership and define the duties of such committees.

E. Defense and Indemnification.

1. Right of Indemnification. Each Member, officer and employee of Authority whether or not then in office, and any person whose testator or intestate was such a Member, officer or employee, shall be indemnified by the Authority in accordance with and to the fullest extent permitted by law for the defense of, or in connection with, civil or criminal actions or proceedings or appeals therein arising out of the Members', officers' or employees' exercise or carrying out of any of the Authority's purposes and powers; provided however, that no Member, officer or employee shall be reimbursed for attorney fees and expenses incurred by

the Member, officer or employee in his or her defense of a criminal proceeding or matter unless such Member, officer or employee is acquitted of such charges or the charges are dismissed, or if the attorney fees and expenses are incurred in connection with a grand jury appearance, no true bill is returned against the member, officer of employee.

The right of indemnification herein provided shall not be deemed exclusive of any other rights to which any such Member, officer or employee may now or hereafter be otherwise entitled and specifically, without limiting the generality of the foregoing, shall not be deemed exclusive of the rights, pursuant to statute or otherwise, of any such Member, officer or employee in any such action or proceeding to have assessed or allowed in his favor, against the Authority or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

ARTICLE VIII
AMENDMENTS

The Bylaws of the Authority may be altered, amended or repealed by resolution of the Board, provided that a copy of the proposal to so alter, amend or repeal such Bylaws shall be mailed, electronically transmitted or delivered to each Member of the Board at least seven business days prior to the date of the meeting at which such proposal is to be considered. The Members may, however, by unanimous consent, agree to consider and act upon any such proposal at any duly called meeting of the Board.

TO: The Thruway Authority Governance Committee


FROM: Joseph P. Igoe
First Deputy General Counsel

SUBJECT: Review and Approval of Real Property Management Policy, Personal Property Disposal Policy, Procurement Contracts Policy, Whistleblower Policy, Code of Ethics Governing Employees, and Code of Ethics Governing Board Members


The Governance Committee Charter requires Governance Committee review of certain Authority policies. The Public Authorities Law requires some policies to be reviewed by the Board on an annual basis; whereas the Authorities Budget Office recommends other policies to be reviewed and evaluated on an annual basis. Consistent with such, attached in Exhibit A for the review of the Governance Committee are: Real Property Management Policy, Personal Property Disposal Policy, Procurement Contracts Policy, Whistleblower Policy, Code of Ethics Governing Employees and Code of Ethics Governing Board Members. Appropriate Authority staff have reviewed such. No changes to the policies are recommended except to the Whistleblower Policy, Code of Ethics Governing Employees and Code of Ethics Governing Board Members to change references from the Joint Commission on Public Ethics to the Commission on Ethics and Lobbying in Government.

RECOMMENDATION

It is recommended that the Governance Committee approve these policies and authorize Authority staff to present them to the Board.

 Thruway Authority GENERAL POLICY	SECTION TITLE POLICIES -- PERSONNEL	NUMBER 25-2-07
APPROVED BOARD MEETING NUMBER: 753 RESOLUTION NUMBER: 6351 DATE: March 28, 2022	SUBJECT CODE OF ETHICS GOVERNING EMPLOYEES	

- A. New York State Thruway Authority (Authority) employees shall comply with all laws, including but not limited to the Federal Hatch Act, Section 94(15) of the Executive Law, Sections 73, 73-a and 74 of the Public Officers Law and the ~~Joint~~ Commission on ~~Public~~ Ethics' and Lobbying in Government's rules and regulations found in 19 NYCRR Part 930 et seq.
- B. Authority employees shall perform their duties with transparency, without favor and refrain from engaging in outside matters of financial or personal interest, including other employment, that could impair independence of judgment or prevent the proper exercise of one's official duties.
- C. Authority employees shall not directly or indirectly make, advise or assist any person to make any financial investment based upon information available through the employee's official position that could create any conflict between their public duties and interests and their private interests.
- D. Authority employees shall not use or attempt to use their official position with the Authority to secure unwarranted privileges for themselves, members of their family or others, including employment with the Authority or contracts for materials or services with the Authority.
- E. Authority employees must conduct themselves at all times in a manner that avoids any appearance that they can be improperly or unduly influenced, that they could be affected by the position of or relationship with any other party, or that they are acting in violation of their public trust.
- F. Authority employees may not engage in any official transaction with an outside entity in which they have a direct or indirect financial interest that may reasonably conflict with the proper discharge of their official duties.
- G. The Executive Director, Chief of Staff and/or General Counsel shall be responsible for promulgating additional guidelines and restrictions

 Thruway Authority	SECTION TITLE GENERAL POLICY	NUMBER 25-2-26
	POLICIES -- PERSONNEL	
APPROVED BOARD MEETING NUMBER: RESOLUTION NUMBER: DATE:	SUBJECT WHISTLEBLOWER POLICY	

I. INTRODUCTION

It is the policy of the New York State Thruway Authority (Authority) to afford certain protections to individuals who in good faith report violations of the Authority's CODE OF ETHICS (25-2-07) or other instances of Wrongdoing within the Authority. This Policy is intended to encourage and enable Authority employees to raise concerns of potential Wrongdoing in good faith within the Authority and without fear of retaliation. Employees covered by this Policy include all Board Members, and officers and staff employed at the Authority whether full-time, part-time, temporary, on probation and/or employed pursuant to contract.

This Policy establishes the protection for Whistleblowers and the procedures for reporting potential Wrongdoing within the Authority.

II. DEFINITIONS

For purposes of this Policy, the following definitions shall apply:

- A. "Personnel Action" - Any action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.
- B. "Whistleblower" - Any employee who in good faith discloses information concerning Wrongdoing by an Authority employee, consultant or contractor.
- C. "Wrongdoing" - Any alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, intentional reporting of false or misleading information, or abuse of authority that relates to the Authority.

III. REPORTING WRONGDOING

All employees who discover or have knowledge of potential Wrongdoing concerning employees of the Authority; a person having business dealings with the Authority; or the Authority itself, shall report such activity in accordance with the following procedures.

SECTION:

POLICIES – PERSONNEL



**Thruway
Authority**

NUMBER: **25-2-26**

SUBJECT:

**WHISTLEBLOWER
POLICY**

2

DATE

PAGE

- A. All employees who discover or have knowledge of potential Wrongdoing shall promptly disclose information concerning such Wrongdoing in a written or oral report to his or her immediate supervisor, intermediate supervisor, Administrative Officer, Department Head, Bureau of Labor Relations and Employee Safety, the Chief of Staff, the General Counsel, the Executive Director, the Chair, or, as outlined below, the Office of Equal Employment Opportunity and Diversity Development or the Department of Audit and Management Services:
- Office of Equal Employment Opportunity and Diversity Development for Wrongdoing involving discrimination based on protected class status.
 - Department of Audit and Management Services for Wrongdoing involving waste, fraud or abuse.

Written disclosures are preferred where appropriate.

- B. The individual(s) to whom the potential Wrongdoing is reported shall (1) review the information in a timely and reasonable manner; and (2) if such review indicates the reasonable possibility that there has been an occurrence of Wrongdoing, take appropriate corrective action and where appropriate, refer such information to the appropriate Authority office, New York State Office of the Inspector General, ~~Joint Commission on Public Ethics~~[Commission on Ethics and Lobbying in Government](#), Authorities Budget Office or an appropriate law enforcement agency. All employees are responsible for cooperating in the investigation of potential Wrongdoing by providing any information they possess concerning the matters being investigated and being candid about such matters.
- C. The identity of the Whistleblower and the substance of his or her allegations will be kept confidential to the best extent possible. Should an employee believe in good faith that disclosing information within the Authority pursuant to Section III. A. would likely subject him or her to adverse Personnel Action or be wholly ineffective, the employee may instead disclose the information to the New York State Office of the Inspector General, New York State Division of Human Rights, U.S. Equal Employment Opportunity Commission, ~~Joint Commission on Public Ethics~~[Commission on Ethics and Lobbying in Government](#), Authorities Budget Office or an appropriate law enforcement agency, if applicable.

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IV. NO RETALIATION OR INTERFERENCE

No employee shall retaliate against any Whistleblower for the good faith disclosure of potential Wrongdoing, whether through adverse Personnel Action, harassment, threats, coercion, or abuse of authority; and, no employee shall interfere with the right of any other employee by any improper means aimed at deterring disclosure of potential Wrongdoing. Any attempts at retaliation or interference are strictly prohibited. Any Whistleblower who believes that he or she has been retaliated against for reporting or disclosing potential Wrongdoing should file a written complaint in accordance with Section III. above.

All allegations of retaliation against a Whistleblower or interference with an individual seeking to disclose potential Wrongdoing will be thoroughly investigated by the Authority. Any employee who retaliates against or has attempted to interfere with any individual for having in good faith disclosed potential Wrongdoing may be subject to discipline or other administrative action, which may include termination of employment. Any allegation of retaliation or interference will be treated as a separate matter and treated seriously irrespective of the outcome of the initial complaint.


V. OTHER LEGAL RIGHTS NOT IMPAIRED

Nothing in this Policy shall be deemed to diminish or impair the rights of an employee or the Authority under any law, rule, regulation or collectively negotiated agreement or to prohibit any Personnel Action which otherwise would have been taken regardless of any disclosure of information.

Specifically, this Policy is not intended to limit any rights or remedies that an individual may have under the laws of the United States and the State of New York, including but not limited to the following provisions: Civil Service Law § 75-b, Labor Law § 740, State Finance Law § 191 (commonly known as the "False Claims Act"), and Executive Law § 55(1).

VI. ADMINISTRATION OF POLICY

The Executive Director shall be responsible for interpreting, implementing, and administering this Policy. Such responsibility may include developing any operational and/or administrative policies and procedures necessary to carry out the intent of the Policy.

 Thruway Authority GENERAL POLICY	SECTION TITLE POLICIES -- PURCHASING	NUMBER 25-5-01
APPROVED BOARD MEETING NUMBER: 753 RESOLUTION NUMBER: 6351 DATE: March 28, 2022	SUBJECT PROCUREMENT CONTRACTS	

Introduction

This Policy, established pursuant to Section 2879 of the New York State Public Authorities Law, sets forth the guidelines of the New York State Thruway Authority (Authority) regarding the Authority's use, awarding, monitoring and reporting of Procurement Contracts. These guidelines are not intended and shall not be deemed to grant or confer any rights or remedies to or upon any third party.

Except as otherwise provided herein, all Authority Procurement Contracts are subject to this Policy. Attachment 1 sets forth a representative (but not exclusive) list of the types of goods purchased, and a description of those areas of responsibility and oversight requiring the use of services and the reasons for the use of services in such areas.

I. Definitions

- A. "Emergency" shall mean an unanticipated, sudden or unexpected event or escalation of an event beyond the control of the Authority which, if not immediately corrected, would endanger: a) the life, health, safety or welfare of any person, or b) the continued public use or function of a transportation or other facility or property of the Authority or the State of New York.
- B. "Foreign Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by the Authority and which are substantially produced outside New York State, or services sought by the Authority and which are substantially performed outside New York State. For purposes of construction services, a Foreign Business Enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
- C. "Minority Owned Business Enterprise" shall have the same meaning as that set forth in Public Authorities Law Section 2879.
- D. "New York State Business Enterprise" shall mean any business enterprise which offers for sale, lease or other form of exchange, goods or services sought by the Authority which are substantially manufactured, produced, assembled or performed within New York State.

- E. “New York State Resident” shall have the same meaning as that set forth in Public Authorities Law Section 2879.
- F. “Procurement Contract” shall mean any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of fifteen thousand dollars (\$15,000) or more. Construction contracts and design-build contracts are included within the scope of the definition of a Procurement Contract pursuant to this Policy, but are not Procurement Contracts pursuant to Public Authorities Law Section 2879.
- G. “Professional Firm” shall mean any individual or sole proprietorship, partnership, corporation, association or other legal entity permitted by law to practice the professions of architecture, engineering or surveying.
- H. “Service Disabled Veteran Owned Business Enterprise” shall have the same meaning as that set forth in Article 17-B of the Executive Law Section 369-H.
- I. “Women Owned Business Enterprise” shall have the same meaning as that set forth in Public Authorities Law Section 2879.

II. Selection of Contractors for Goods

Except as otherwise provided in this Policy, the Authority shall award Procurement Contracts for goods to the lowest responsible bidder as will best promote the Authority’s interests, taking into consideration: the reliability of the contractor; the quality of the goods to be furnished; the goods’ conformity with the specifications; the terms of delivery; and/or such other criteria as the Authority determines appropriate. The Authority shall solicit bidders for applicable contracts pursuant to Article 4-C of the New York State Economic Development Law (e.g., advertise in the Contract Reporter). The Authority shall solicit price quotes from at least three (3) sources, if available.

III. Selection of Contractors for Services

- A. The Authority may contract for services when, because of one or more of the following factors or considerations, it is more beneficial for such services to be contracted for than performed by employees of the Authority:
 - 1. lack of or unavailability of sufficient staff, facilities, equipment or other resources;
 - 2. requirement of special expertise or abilities not adequately possessed by Authority employees;

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3. timing;
 4. short term or infrequent need for the service; or
 5. distance of the location(s) where the services must be performed from Authority offices or facilities.
- B. Except as otherwise provided in this Policy, the Authority shall award Procurement Contracts for professional services, except those to Professional Firms, to a responsive and responsible contractor on the basis of best value, taking into account: the contractor's experience and capability to perform the required services, the adequacy of contractor's staff to be assigned to Authority work, the overall quality and responsiveness of the contractor's proposal, the contractor's fee structure and overall price; and/or such other criteria as the Authority determined appropriate. Procurement Contracts for construction and design-build services shall be awarded in compliance with all applicable laws. The Authority shall solicit proposals for applicable contracts pursuant to Article 4-C of the New York State Economic Development Law (e.g., advertise in the Contractor Reporter). The Authority shall solicit price quotes from at least three (3) sources, if available.
- C. The Authority shall award Procurement Contracts for the services of Professional Firms on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable fees. The Authority shall not refuse to negotiate with a Professional Firm solely because the ratio of the "allowable indirect costs" to direct labor costs of the Professional Firm or the hourly labor rate in any labor category of the Professional Firm exceeds a limitation generally set by the Authority in the determination of the reasonableness of the estimated cost of services to be rendered by the Professional Firm, but rather the Authority should also consider the reasonableness of cost based on the total estimated cost of the service of the Professional Firm which should include, among other things, all the direct labor costs of the Professional Firm for such services plus all "allowable indirect costs," other direct costs, and negotiated profit of the Professional Firm. "Allowable indirect costs" of a Professional Firm are defined as those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits.
- D. The Director of Purchasing may, in consultation with the appropriate Authority program managers, designate those services other than the services of Professional Firms for which cost will be the only criterion for determining best value.

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IV. Waiver of Competition

The Authority Board may waive the use of the competitive procedure for Procurement Contracts provided in this Policy based upon one or more of the following findings:

- A. There is a need to respond to an Emergency.
- B. A condition exists that makes it impractical or not in the Authority's best interest to seek competition due to the specialized nature of the goods or services required.
- C. There is a historical relationship, the continuation of which is in the best interests of the Authority.
- D. There is a need for confidentiality.
- E. The proposed project requires specialized knowledge of, or proximity to, the Authority.
- F. There is a requirement for which, in the sole opinion of the Authority, there is a lack of responsible competition to perform the desired services.
- G. There is a specific contractor selection that is necessary or convenient to the operations of the Authority.
- H. The purchase of goods or services will be from small business concerns or certified Minority Owned or Women Owned Business Enterprises, or the purchase is for goods or technology that are recycled or remanufactured, in an amount that does not exceed five hundred thousand dollars (\$500,000).

V. General Procurement Requirements

- A. The Authority shall ensure that its Procurement Contracts in an amount equal to or in excess of fifty thousand dollars (\$50,000) comply with the public notification requirements of Article 4-C of the New York State Economic Development Law.
- B. The Authority shall not enter into a Procurement Contract with any current or former officer or employee of the Authority where such contract would be in contravention of law or would create a conflict of interest.
- C. The Authority shall submit all Procurement Contracts in excess of fifty thousand dollars (\$50,000) to the New York State Comptroller's Office for approval.

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- D. The Executive Director must approve all contractor selections for Procurement Contracts for services based upon the recommendation of either the Non-Engineering Personal Services Committee or the Engineering Selection Committee.
- E. The Authority may utilize the Procurement Contracts of other Federal, State or local entities to purchase goods or services provided it would be in the Authority's best interests to do so.
- F. The Authority shall comply with State Finance Law Sections 139-j and 139-k that place restrictions on attempts to influence during the procurement process, require the recording of attempts to influence made during the restricted period for a procurement, and outline the responsibilities of offerors relative to the procurement process.
- G. The Authority will perform an affirmative review of a contractor's responsibility, in accordance with applicable laws, rules, regulations and guidelines, prior to the award of a Procurement Contract. This review shall be designed to provide reasonable assurance that the proposed contractor is responsible and should consider such issues as: integrity; performance on other governmental contracts; legal ability to supply the product or perform the services; and financial and organizational capability.
- H. The Authority will create a record for each Procurement Contract that documents its compliance with this Policy.

VI. Participation of Minority and/or Women-Owned Business Enterprises (MWBEs)

It is the policy of the Authority to comply with the provisions of Article 15-A of the New York State Executive Law, which requires that every Procurement Contract over \$25,000 will afford equality of economic opportunities for minority group members and women and the facilitation of participation by MWBEs. The Authority shall establish separate goals for participation of MWBEs on all Authority contracts where applicable. Furthermore, if the performance of any Procurement Contracts permits or requires the use of a subcontractor, these contracts shall require the prime contractor to act affirmatively to encourage participation by MWBEs in such subcontract and to report the nature and extent of such efforts to the Authority.

All Procurement Contracts, where required, shall comply with Executive Law Article 15-A and the Public Authorities Law, and rules and regulations promulgated thereunder.

- A. In furtherance of the above, and to promote the use of certified MWBEs in Procurement Contracts, the Authority shall:

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1. Designate appropriate staff to oversee the Authority's programs established to promote and assist: (i) participation by certified MWBEs in the Authority's procurement opportunities and facilitation of the award of Procurement Contracts to such enterprises; (ii) the utilization of certified MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Authority; and (iii) the utilization of partnerships, joint ventures or other similar arrangements between certified MWBEs and other entities having Procurement Contracts with the Authority. Such staff will be familiar with the procurement process utilized by the Authority, report directly to the Executive Director and either directly or through their designees participate in the procurement process.
2. Establish appropriate goals for participation of MWBEs in Procurement Contracts and for the utilization of MWBEs as subcontractors and suppliers.
3. Provide notice of any procurement to appropriate professional organizations that serve MWBEs so that members of these organizations are apprised of potential opportunities to contract with the Authority.
4. Include language regarding equal employment opportunity and non-discrimination in all Procurement Contracts and/or all documents soliciting bids or proposals for Procurement Contracts, and require the contractor to include this language in all subcontracts.
5. Include a provision in the Authority's Procurement Contracts expressly providing that any contractor who willfully and intentionally fails to comply with the MWBE participation requirements as set forth in the contract shall be liable to the Authority for liquidated or other appropriate damages as may be determined by the Authority.
6. Maintain lists of qualified certified MWBEs that have expressed an interest in doing business with the Authority and ensure such entities receive direct notice of any impending procurements. The Authority shall also consult the lists of certified MWBEs maintained by the Department of Economic Development.
7. List applicable goals for participation of certified MWBEs in Procurement Contracts in all solicitations and for the utilization of MWBEs as subcontractors and suppliers by entities having Procurement Contracts with the Authority.

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8. Conduct procurements in a manner that will enable the Authority to achieve the maximum feasible portion of the goals established and eliminate barriers to participation of MWBEs on Procurement Contracts. The Authority shall include, without limitation:
 - a) the expected degree of MWBE participation;
 - b) provisions relating to joint ventures, under which a bidder may count toward meeting its MWBE participation goal;
 - c) provisions under which the Authority may waive obligations of the contractor relating to MWBE participation after a showing of good faith efforts to comply with the requirements of this Policy and all applicable laws pursuant to the waiver provisions contained in Executive Law Article 15-A; and
 - d) verification that MWBEs listed in a successful bid are actually participating to the extent listed on the project for which the bid was submitted.

B. In implementing the provisions of this Section VI, the Authority shall:

1. Consider, where practicable, the severability of construction projects and other bundled projects;
2. Implement a program that will enable it to evaluate each Procurement Contract to determine the appropriateness of the established goal;
3. Consider compliance with the requirements of any federal law concerning opportunities for MWBEs which effectuates the purpose of this section; and
4. Consult the most recent disparity study pursuant to Article 15-A of the Executive Law.

VII. Participation of Service-Disabled Veteran-Owned Business Enterprises (SDVOBEs)

It is the policy of the Authority to comply with the provisions of Article 17-B of the New York State Executive Law, which requires that every Procurement Contract over \$25,000 will afford equality of economic opportunities to certified SDVOBEs thereby further integrating such businesses into New York State's economy. The Authority will make a good faith effort to achieve SDVOBE participation to the extent such firms are available, and will use its best effort so that SDVOBE firms are included in Procurement Contracts.

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All Procurement Contracts, where required, shall comply with Executive Law Article 17-B. The Executive Director shall appoint one or more senior staff to oversee the Authority's SDVOBE program.

Before the Authority issues bid documents, or during the Authority's bid development phase, the Authority's procurement staff will consult the Directory of SDVOBEs posted on the OGS website to determine whether the solicitation may be considered for a SDVOBE goal.

Authority staff will also review the Directory of SDVOBEs prior to making discretionary purchases and choose SDVOBEs when feasible.

All procurements subject to Executive Law Article 17-B will contain standard language in solicitations and Procurement Contracts regarding participation of SDVOBEs on State contracts.

VIII. Promotion of New York State Business Enterprises and New York State Residents in Procurement Contracts

The Authority shall promote and solicit the participation by New York State Business Enterprises and New York State Residents in Procurement Contracts in compliance with Public Authorities Law Section 2879 and shall develop procedures consistent with such.

IX. Requirements Regarding Foreign Business Enterprises and Discriminatory Jurisdictions

The Authority will follow the requirements and procedures of Public Authorities Law Section 2879(5) with respect to Procurement Contracts with Foreign Business Enterprises. Accordingly, the Authority shall notify the Department of Economic Development of the award of a Procurement Contract for the purchase of goods or services from a Foreign Business Enterprise in an amount greater than or equal to one million dollars simultaneously with notifying the successful bidder. The Authority will not enter into any such Procurement Contract until at least 15 days have elapsed from notice to the Department of Economic Development, except where the Procurement Contract was awarded on an emergency or critical basis or where the Commissioner of Economic Development waives the notice requirement.

In addition, pursuant to Public Authorities Law Section 2879(5), the Authority will impose restrictions on Foreign Business Enterprises located in Discriminatory Jurisdictions with respect to the solicitation and award of Procurement Contracts.

X. Procurement Contract Provisions

To the extent deemed appropriate by the Executive Director and the General Counsel, Procurement Contracts may include, but should not necessarily be limited to, the following provisions:

- A. Scope of Services
- B. Compensation and Allowable Expenses
- C. Payment Methodology
- D. Term or Time for Performance
- E. Personnel, Equipment and Supplies
- F. Standards of Performance
- G. Independent Contractor
- H. Subcontracting
- I. Insurance and Bond Requirements
- J. Liability and Indemnification
- K. Ethics
- L. Confidentiality and Non-Disclosure
- M. Lobbying Law Certification
- N. Public Announcements
- O. Interchange of Data
- P. Environmental Review
- Q. Damages for Delay
- R. Suspension, Abandonment and Termination
- S. Severability Clause
- T. Non-Assignment Clause
- U. Comptroller Approval
- V. Workers' Compensation and Disability Benefits
- W. Non-Discrimination Requirements
- X. Wage and Hours Provisions
- Y. Non-Collusive Bidding Certification
- Z. International Boycott Prohibition
- AA. Set-Off Rights
- AB. Records
- AC. Identifying Information and Privacy Notification
- AD. Equal Employment Opportunities for Minorities and Women
- AE. Conflicting Terms
- AF. Governing Law
- AG. Late Payment
- AH. No Arbitration

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- AI. Service of Process
- AJ. Prohibition on Purchase of Tropical Hardwoods
- AK. MacBride Fair Employment Principles
- AL. Omnibus Procurement Act of 1992
- AM. Reciprocity and Sanctions Provisions
- AN. Purchases of Apparel
- AO. Observance of Laws
- AP. No Waiver of Provisions
- AQ. Entire Agreement
- AR. Iranian Energy Sector Divestment
- AS. Promotion of New York State Business Enterprises and New York State Residents in Procurements
- AT. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified MWBEs
- AU. Participation Opportunities for New York State Certified SDVOBES
- AV. Ensuring Pay Equity (Executive Order No. 162)
- AW. Prohibiting Contracts with Entities that Support Discrimination (Executive Order No. 177)
- AX. Ownership of Materials
- AY. Compliance with New York State Information Security Breach and Notification Act
- AZ. Net Neutrality Principles (Executive Order No. 175)

XI. Delegations

The Authority Board must approve all Procurement Contracts unless such approval has been otherwise delegated in this Policy.

A. The Executive Director or the Executive Director's designee is authorized to:

1. Execute any Procurement Contract, including any amendments thereto, for expenditures in an amount not to exceed three hundred thousand dollars (\$300,000) provided that a Procurement Contract for professional services with a term in excess of one year shall require the Board's review and approval within one year of execution of the Procurement Contract.
2. Approve an increased expenditure by the Authority not to exceed three hundred thousand dollars (\$300,000) for any Procurement Contract previously approved by the Authority Board.

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3. Approve or extend Procurement Contracts for a period in excess of one year provided such contract or extension does not exceed three hundred thousand dollars (\$300,000); provided that Procurement Contracts for professional services may not be extended for a period in excess of one year without approval of the Board.
 4. Waive the use of a competitive procedure for any Procurement Contract needed to respond to an Emergency in accordance with the procedure set forth in the Authority Procedure for Declared Emergency Work and/or the Board resolution authorizing the Authority's Contracts Program.
 5. Waive the use of a competitive procedure for any Procurement Contract in an amount not to exceed three hundred thousand dollars (\$300,000) when the Executive Director or the Executive Director's designee finds one or more of the conditions set forth in Article IV. B. - H. of this Policy to be present.
 6. Interpret, implement and administer this Policy, including the development of operational and/or administrative policies, guidance and procedures necessary to carry out its intent. These operational and/or administrative policies should, at a minimum, identify the roles and responsibilities of Authority personnel implementing and administering this Policy and the manner in which those responsibilities are to be fulfilled.
 7. Appoint a Procurement Integrity Officer whose responsibilities shall include the establishment of processes to prevent or detect improper lobbying influence, to provide guidance to program managers regarding vendor responsibility determinations, to administer the Contract Review and Vendor Responsibility Committee, and to ensure the Authority is in compliance with applicable executive orders, laws, rules and regulations regarding procurement integrity and vendor responsibility.
- B. The Director of Purchasing or the Director of Purchasing's designee is authorized to execute Procurement Contracts for goods provided the process used to procure such goods is in accordance with Authority procedures, and the contractor was selected based on a solicitation for bids. The Director of Purchasing may, without a formal competitive process, execute any Procurement Contract for the purchase of goods from a small business concern or certified MWBE, or for goods or technology that are recycled or remanufactured, in an amount not to exceed five hundred thousand dollars (\$500,000).

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- C. Procurement Contracts involving the Authority's Contracts Program shall be awarded, amended/supplemented and managed by the Chief Engineer, Executive Director and Chief Financial Officer pursuant to the Board resolutions authorizing the Authority's Contracts Program.

XII. Review and Reporting Requirements

- A. In accordance with Public Authorities Law Section 2879, the Authority Board shall annually review and approve this Policy.
- B. Information related to Procurement Contracts involving the Contract Program shall be included in the submittal to the Board seeking authorization for the Contracts Program for the Board's review and approval.
- C. The Executive Director shall report to the Board quarterly on all Procurement Contracts or amendments thereto that he or she has executed pursuant to Article XI. A. of this Policy.
- D. Following each fiscal year, the Authority Board shall approve an annual report on Procurement Contracts as required by subdivision 7 of Section 2879 of the Public Authorities Law. Such annual report will include: (i) this Policy and any amendments hereto; (ii) an explanation of this Policy and any amendments hereof; (iii) a list of the year's Procurement Contracts and their status and selection process; (iv) a list of the aforesaid contracts entered into with New York State Business Enterprises (as defined in Public Authorities Law, Section 2879(3)(i)), and the subject matter and value thereof; (v) a list of the aforesaid contracts entered into with Foreign Business Enterprises and the subject matter and value thereof; (vi) a list of contracts entered into with certified MWBEs and value thereof; (vii) all referrals made and all penalties imposed pursuant to Executive Law Section 316; and (viii) a list of Procurement Contracts exempted from reporting in the Contract Reporter and the basis for each exemption. The annual report on Procurement Contracts, after being approved by the Board, shall be submitted to the Division of the Budget with copies to the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee and the Assembly Ways and Means Committee.

XIII. Miscellaneous Provisions

- A. The Authority's failure to comply with the provisions of this Policy shall not alter, modify the terms of, affect the validity of, or impair any of the Authority's rights or privileges under any Procurement Contract to which the Authority is a party.

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- B. The Authority may allow other Federal, State or local entities to purchase goods or services through an Authority Procurement Contract provided it would be in the Authority's best interests to do so and such procurement is acceptable to the contractor.

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ATTACHMENT 1

A. Types of Goods Purchased

The following is an illustrative (but not exclusive) list of the types of goods the Authority has purchased in the past and may purchase in the future:

- Office equipment, furniture and supplies such as fax machines, copiers, audio/video equipment, copier toner and paper;
- Computer equipment and supplies such as mainframe components and related equipment, personal computers, software, and peripheral equipment, accessories and supplies;
- Heavy construction equipment such as bulldozers, wheel loaders, crawler loaders, excavators and pavers;
- Marine fleet vessels and related equipment such as barges, tugs and marine generators;
- Motorized automotive truck fleet and related equipment such as diesel and gas trucks of all sizes, plow trucks, plow attachments, material spreaders, aerial lift trucks and tow trucks;
- Prefabricated buildings, building equipment such as furnaces, boilers, and air conditioners, and building maintenance equipment and supplies;
- Uniforms for employees;
- Road maintenance materials such as salt, ice control abrasives and de-icing solutions;
- Highway construction materials such as asphaltic materials, sand, stone, gravel and ready-mix concrete;
- Property maintenance equipment and supplies such as mowers, tractors and associated equipment;
- Telecommunication systems utilizing conventional and fiber optic technologies including cell phones, pagers, telephone switching equipment, radios, radio towers, equipment and accessories;

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- Intelligent transportation systems equipment supporting E-ZPass® and automatic vehicle identification (AVI);
- Sign fabrication materials, equipment and supplies including aluminum sheets and sign blanks, reflective sheeting and sign making machines;
- Building security systems, fire alarms and suppression systems, and card access and badging systems.

B. Types of Services Purchased

The Authority purchases services for a variety of reasons including, but not limited to, the need to: augment in-house staff; provide expertise in specialized areas; provide independent review; serve as a liaison with certain entities; and handle specialized matters expeditiously. The following is an illustrative (but not exclusive) list of the types of services the Authority has purchased in the past or may purchase in the future:

- Legal
Provide legal services to the Authority in the areas of bond and note financing, environmental review compliance, litigation, real property matters, labor issues, intellectual property, technology and computer law, insurance law and government relations.
- Construction
Construction, reconstruction, repair, rehabilitation, and improvement of highway, bridges and other facilities under the jurisdiction of the Authority.
- Expert Witness
Provide the Authority with expert analysis of issues raised in litigation and serve as expert witness at trial as needed. Such issues may include, but shall not be limited to: medical assessment of personal injuries, economic analysis of potential lost earnings and accident reconstruction.
- Audit and Accounting
Provide audit services pertaining to the year-end preparation of financial statements for the Authority in conformance with generally accepted accounting principles. Perform special audits and provide financial advisory services as requested.

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- **Building Maintenance and Security**
Provide building maintenance services such as janitorial, HVAC, rubbish removal, electrical preventive maintenance, elevator inspection and maintenance, and security, including guards.
- **Investment Banking**
Competitive sales: Purchase and distribute Authority debt issuances. Negotiated sales: Provide assistance in the preparation, sale, marketing and distribution of Authority debt issuances.
- **Environmental**
Provide environmental services such as hazardous waste removal and disposal, asbestos removal, air quality testing and weather forecasting.
- **Financial/Transportation/Counting**
Provide courier and money counting services from toll facilities to banking facilities and Dun and Bradstreet financial reporting.
- **Trustee Banking Services**
Provide banking services to monitor the timely receipt of debt service payments, compliance and reserve requirements, retirement of debt, collateral evaluations and other services as required by the various debt resolutions.
- **Communications**
Provide radio and intercom installation, highway advisory radio installation and radio tower installation.
- **Engineering**
Provide engineering services for Authority owned or operated facilities, including but not limited to, design and construction inspection engineering services.
- **Architectural**
Provide architectural services for Authority owned or operated facilities.
- **Surveying**
Provide surveys of Authority owned properties to establish boundaries, utility locations, etc.

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- Real Property Advisory Services
Assist the Authority with evaluations of Authority property including the value and potential uses thereof.
- Computer Programming Services
Assist the Authority with the design, implementation and operation of computer programs that will enable the Authority to function more efficiently.
- Health
Provide health care services such as medical testing, nursing and prescription eyeglass services.
- Equipment Maintenance
Provide routine service and repair of office, data processing, bridge, building, highway maintenance and motorized equipment.
- Risk Management Consulting
Provide risk management services to assist the Authority with its insurance program.
- Training
Provide supervisory and special skills to Authority employees.
- Printing
Provide financial printing services based upon specifications and detail developed by the Authority. Provide various technical printing services relative to the reproduction of forms and other printed matter. Provide technical, graphic, layout and printing services in connection with production of the Authority's annual report and any other reports, brochures, maps or printed matter that may be necessary or desirable.

 Thruway Authority GENERAL POLICY	SECTION TITLE POLICIES – MANAGEMENT OF PROPERTY	NUMBER 25-6-01
APPROVED BOARD MEETING NUMBER: 753 RESOLUTION NUMBER: 6351 DATE: March 28, 2022	SUBJECT THRUWAY PERSONAL PROPERTY DISPOSAL POLICY	

I. INTRODUCTION

Pursuant to Article 2, Title 9 of the Public Authorities Law, the New York State Thruway Authority (Authority) is responsible for the financing, construction, reconstruction, improvement, development, maintenance and operation of the highway system known as the Thruway. In furtherance of such responsibilities, the Authority may occasionally have Personal Property that requires disposal. Such Personal Property may include surplus Authority property, lost and found property, and abandoned tangible and intangible property of others.

The purpose of the Policy is to detail the Authority's operative policy and instructions regarding the disposal of Personal Property.

II. DEFINITIONS

A. Transactions

For purposes of the Policy, Transactions shall include, but not be limited to, Disposals and the issuance of permits, licenses and other temporary use documents for the use of Personal Property.

B. Disposals

Disposals include the sale of Personal Property, the transfer of any beneficial interest in Personal Property such as leases, and the exchange of Personal Property. Disposals do not include the transfer of Personal Property secured by a loan or other financial obligation of another party. Disposals do not include permits, licenses or temporary use documents that are otherwise revocable due to operational requirements or in the best interests of the Authority. Consistent with prior Board action, permits do not convey or transfer a beneficial interest in the Personal Property. Statutory enactments in 2005 and 2009 govern the disposition of Personal Property in excess of \$5,000 in value.

C. Personal Property

Personal Property includes Tangible Personal Property and Intangible Personal Property.

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1. Tangible Personal Property is property possessing a physical form and includes Surplus Personal Property, property lost and found on Authority property, Personal Property purposely left behind on real property under the jurisdiction of the Authority, and Abandoned Motor Vehicles on Authority property.
2. Intangible Personal Property is property that may have no intrinsic and marketable value on its own, but is merely the representative or evidence of value and may include instruments payable, drawn or issued to a payee, a bearer or to cash and may include items such as unclaimed wages, bonds, checks and other instruments representing a right with respect to property, or a share, participation or other interest in property or in an enterprise.

D. Abandoned or Lost Personal Property

Abandoned or Lost Personal Property can be Tangible or Intangible Personal Property that remains unclaimed after notification to an owner, if known, and/or after being held for the required holding periods as prescribed by statute. This includes all lost or mislaid property found on Authority property/premises, as well as property which is knowingly abandoned.

E. Abandoned Motor Vehicles

An Abandoned Motor Vehicle is a type of Tangible Personal Property with special statutory and regulatory requirements for disposal and processing (see Section V.A.).

F. Surplus Personal Property

Surplus Personal Property is a type of Personal Property that includes equipment, materials, inventory and other Personal Property that have been determined to be no longer needed for corporate purposes or where disposition of such items is in the best interest of the Authority.

III. GENERAL LEGAL REQUIREMENTS

All Transactions shall comply fully with applicable State, Federal and local laws, rules and regulations as well as policies, procedures and executive orders including, but not limited to, the Abandoned Property Law, the Personal Property Law, the Public Authorities Law, the Vehicle and Traffic Law and any subsequently enacted statutes, rules and/or regulations.

IV. GENERAL PRINCIPLES

- A. The Authority shall maintain adequate inventory controls and accountability systems for all Personal Property under its control.
- B. The Authority may dispose of any Surplus Personal Property not necessary for its corporate purposes in whatever timeframe that either the Contracting Officer or the Board deems appropriate.
- C. The Authority may authorize the use of Authority Personal Property by an entity for any period or term using a temporary, revocable permit, license or other document that does not transfer a beneficial interest in the Personal Property. Such temporary, revocable use is not considered a Disposal for purposes of this Policy.
- D. Personal Property shall not be disposed of by the Authority for less than fair market value, except in limited circumstances as set forth in D.1. below. Fair market value may be determined through the use of appraisals, requests for proposals, the bid or auction process, or other means.
 - 1. No asset owned, leased or otherwise in the control of the Authority with a value in excess of \$5,000 may be sold, leased, or otherwise alienated for less than its fair market value except if:
 - (a) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
 - (b) the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
 - (c) in the event the Authority seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the Authority's mission, purpose or governing statutes, the Authority shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such

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proposed transfer during the months of January through June, provided that if the legislature receives notification of a proposed transfer during the months of July through December, the legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the Authority may effectuate such transfer.

2. In the event a below fair market value asset transfer is proposed, the following information must be provided to the Authority Board and the public:
 - (a) A full description of the asset;
 - (b) An appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Authority Board;
 - (c) A description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including, but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
 - (d) A statement of the value to be received compared to the fair market value;
 - (e) The names of any private parties participating in the transfer, and if different than the statement required by subparagraph (d) of this paragraph, a statement of the value to the private party; and
 - (f) The names of any other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
 3. Before approving the disposal of any property for less than fair market value, the Authority Board shall consider the information described in paragraph 2 of this section and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.
- E. The Authority must use a competitive process as required by the Public Authorities Law and related statutes, including public advertising for Disposals exceeding \$15,000 in value, except in limited circumstances. In order to dispose of Personal

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Property by negotiation or public auction without public advertising, one of the following must be met:

1. The Personal Property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the Personal Property is to be sold in such quantity that, if it were disposed of by public advertising, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
 2. The fair market value of the property does not exceed \$15,000;
 3. Bid prices after advertising are not reasonable, either as to all or some part of the Personal Property, or have not been independently arrived at in open competition;
 4. The Disposal will be to the State or any political subdivision, and the estimated fair market value of the Personal Property and other satisfactory terms of disposal are obtained by negotiation;
 5. Under those circumstances permitted by Section IV.D. of this Policy; or
 6. The action is otherwise authorized by law.
- F. For Personal Property valued at over \$15,000 disposed of by negotiation, an explanatory statement is required. Not less than 90 days in advance of the Disposal, an explanatory statement shall be prepared and distributed by the Contracting Officer in accordance with Public Authorities Law §2897, detailing the circumstances of the Disposal including, but not limited to, the proposed price.
- G. The Authority shall create a clear and comprehensive record for each Transaction that documents its compliance with this Policy. Such record shall be maintained in a manner and for a period consistent with the applicable document retention policy.

V. GENERAL PRACTICES

A. Abandoned Motor Vehicles

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The handling and disposal of Abandoned Motor Vehicles is statutorily covered under Vehicle and Traffic Law and specifically promulgated under New York State Thruway Authority Rules and Regulations, and not under the Policy.

B. Lost, Found or Abandoned Tangible Personal Property

Lost, Found or Abandoned Tangible Personal Property with a value over the statutory limits must, within ten days after the finding or acquisition by Authority employees or the Authority's related agents (for example, contractor, employee of the Travel Plaza Food and/or Fuel/Gas Service Operators, or their subcontractors, etc.), be turned over to Troop T for processing and forwarding to the Bureau of Office and Building Maintenance Services (Office Services) at Headquarters in Albany. Office Services will return the property to the owner, if known; if the owner of the property is not immediately known, then the property must be held until the statutory holding period has run. At that time, if the property has not been claimed by the true owner or someone with verifiable ownership rights, then Office Services shall return the property to the known independent finder. If the original finder was an Authority employee or one of its related agents as defined above, ownership then vests in the Authority and may be treated as other Authority owned property.

C. Lost, Found or Abandoned Intangible Personal Property

1. Lost, Found or Abandoned Intangible Personal Property with a value over the statutory limits must, within ten days after the finding or acquisition by Authority employees or the Authority's related agents (for example, contractor, employee of the Travel Plaza Food and/or Fuel/Gas Service Operators, or their subcontractors, etc.), be turned over to Troop T for processing and forwarding to Office Services at Headquarters in Albany. Office Services will return the property to the owner if known; if the owner of the property is not immediately known, then the property must be held until the statutory holding period has run. At that time, if the property has not been claimed by the true owner or someone with verifiable ownership rights, then Office Services shall return the property to the known independent finder. If the original finder was an Authority employee or one of its related agents as defined above, the property vests in the Authority and may be redeemed or negotiated for payment to the Authority.
2. Abandoned Intangible Personal Property originally issued by the Authority such as unclaimed wages or benefits, or unclaimed consumer balances shall be held for the required holding times as prescribed by the Personal Property Law and Abandoned Property Law, at which time the property vests in the Authority.

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3. Other Intangible Personal Property such as unclaimed bonds, dividends, interest, securities, etc. owed to security holders shall be held for the required statutory holding periods by the Authority's properly delegated trustees or other fiduciaries.

D. Surplus Personal Property

The Office of Equipment and Inventory Management will provide the Director of Purchasing or designee with information on all items of Personal Property declared surplus requiring disposal.

VI. DISPOSAL PROCESS

The Director of Purchasing or designee will prepare a list of all Surplus and Abandoned Personal Property to be disposed of and prepare an internal estimate of the value of such property.

A. The method of disposal shall be based on the following Personal Property values:

1. Personal Property value at less than \$1,000 may be sold or donated, or when having an estimated resale value less than the cost of handling and sale may be disposed of as scrap or junk;
2. Personal Property valued at \$5,000 or less may be sold by a competitive process [sealed bid, public auction or electronic auction (e.g., Internet auction such as eBay)] or when approved by the Director of Purchasing, by negotiation or informal canvassing of selected purchasers;
3. Personal Property valued in excess of \$5,000 up to and including \$15,000 may be sold by a competitive process, or by negotiation when approved by the Contracting Officer or, where required, by the Board, such as in Section IV.D. (paragraphs 2 and 3);
4. Personal Property valued in excess of \$15,000 shall be offered for sale by a formal competitive process that includes public advertising unless one of the exceptions listed in Section IV.E. is met. If such an exception exists, disposal may be by negotiation or public auction without public advertising, when approved by the Contracting Officer or, where required, by the Board, such as in Section IV.D. (paragraphs 2 and 3).

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Note: For Personal Property valued in excess of \$15,000 disposed of by negotiation, an explanatory statement is required as described in Section IV.F.

- B. When public advertising is required for Disposals, the following steps must be taken pursuant to Public Authorities Law §2897:
1. The advertisement shall be made at such time, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the Personal Property;
 2. All bids shall be publicly disclosed at the time and place stated in the advertisement; and
 3. The award shall be made with reasonable promptness by notice to the responsible bidder whose bid, in conformance with the solicitation, will be most advantageous to the Authority, price and other factors considered, provided that any and all bids may be rejected when it is in the best interest of the Authority to do so.
- C. When property is sold by sealed bid, by public auction or by an electronic auction, sale prices are approved by the Director of Purchasing or designee. If the Director of Purchasing or designee determines that property should be offered at an established or set price due to its unusual nature, or any other special conditions that would make competitive bidding impractical, the Director of Purchasing or designee will recommend an acceptable price and a method of sale to the Contracting Officer for approval.
- D. If the Director of Purchasing or designee determines that the best interests of the Authority are served by selling at public auction, the Director of Purchasing or designee shall supervise the auction and may reject any and all bids considered to be unacceptable.
- E. Where permitted by law, Disposals may be performed by the Commissioner of General Services on behalf of the Authority when the Authority has entered into an agreement with the Commissioner of General Services pursuant to Public Authorities Law and/or any other applicable statutes.

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VII. REPORTS

The Authority will develop and distribute reports regarding Personal Property management activities as required by law including, but not limited to, an annual Personal Property disposition report.

VIII. PROCUREMENT OF SURPLUS PERSONAL PROPERTY BY EMPLOYEES

Authority employees may not have any personal interest in, or engage in, any activity that would create or appear to create a conflict with the proper discharge of their public duties. It is important, even in the absence of any impropriety, that no appearance of impropriety is given. Therefore, pursuant to the Public Officers Law, all Authority employees, their spouses and any children and stepchildren under age 18 are prohibited from procuring Authority Surplus Personal Property or otherwise securing such property through the use of an agent or other third party.


In addition, Authority employees, other than the Director of Purchasing or designee, shall not disclose to any non-employee any information that they obtain regarding such property due to the nature of their employment. Such disclosure by the Director of Purchasing or designee shall only be made in the course of the proper discharge of their official duties.

IX. RESPONSIBILITIES AND AUTHORIZATIONS

The Board shall designate a Contracting Officer who is responsible for compliance with and enforcement of the Policy as it applies to the disposal of Personal Property.

The Executive Director is authorized to interpret, implement, and administer this Policy and shall develop procedures necessary to carry out its intent, as well as to delegate such authority to members of his/her staff (see below). These procedures should identify the roles and responsibilities of Authority personnel who implement and administer this Policy and define the manner in which those responsibilities are to be fulfilled. The Executive Director is also authorized to oversee the actions of Authority staff to ensure compliance with applicable laws, rules and regulations, and with this Policy.

The Executive Director may delegate, expressly in writing, directly to the Contracting Officer, the authority to sign and execute any and all documents related to any form of property auction or other disposal methods and may also authorize the Contracting Officer to further delegate such authorization to other members of his/her staff in order to carry out the intent of this current Policy.

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I. INTRODUCTION

Pursuant to Article 2, Title 9 of the Public Authorities Law, the New York State Thruway Authority (Authority) is responsible for the financing, construction, reconstruction, improvement, development, maintenance and operation of the highway system known as the Thruway. In furtherance of such responsibilities, the Authority has the power to acquire and hold in the name of the State, by purchase or appropriation, real property, or rights or easements in such real property, and to sell, exchange or otherwise dispose of real property not necessary for its corporate purposes, or whenever the Board shall determine that it is in the interest of the Authority. The Authority also has the power to lease, or to grant Permits to occupy, real property not presently required for Thruway purposes but held for future use in carrying out its corporate purposes, upon such terms and conditions and uses as the Board shall determine.

The purpose of this Policy is to: detail the Authority's operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of real property, the acquisition of real property and the issuance of Permits associated with the Thruway; and authorize the development of Standard Operating Procedures (SOPs) for the purpose of implementing this Policy.

II. DEFINITIONS

A. Transactions

For purposes of this Policy, Transactions shall include, but not be limited to, Acquisitions, Disposals, the issuance of Permits, the obtaining of permits or licenses to access or use real property not under the jurisdiction of the Authority, and Transfers of Jurisdiction.

B. Disposals

Disposals shall include, but not be limited to, the sale of real property, the transfer of any beneficial interest in real property such as leases or easements, and the exchange of real property. Disposals shall not include the transfer of real property secured by a loan or other financial obligation of another party. Disposals shall not include Permits or Transfers of Jurisdiction.

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C. Acquisitions

Acquisitions are Transactions whereby the Authority (i) acquires and holds in the name of the State by purchase or appropriation, real property or rights or easements therein; and (ii) acquires leasehold interests that the Authority holds in its own name. Acquisitions shall not include the obtaining of permits or licenses to access or use real property not under the jurisdiction of the Authority.

D. Permits Issued by the Authority

Permits issued by the Authority grant revocable privileges to use or access real property under the jurisdiction of the Authority. Permits may be issued where the real property is not presently required for Thruway purposes, but held for future use in carrying out its corporate purposes. Permits do not transfer a beneficial interest in real property. Permits are revocable in part to assure availability upon demand of the real property for Authority purposes. Permits include Occupancy and Work Permits.

1. Occupancy Permit

An Occupancy Permit is a revocable at will instrument that authorizes the use of real property under the jurisdiction of the Authority.

2. Work Permit

A Work Permit is a revocable at will instrument that authorizes construction, maintenance, inspection, survey, or other type of work or short term activity on real property under the jurisdiction of the Authority.

E. Permits or Licenses Obtained by the Authority

Permits or licenses obtained by the Authority are revocable instruments that allow the Authority to access or use real property that is not under the jurisdiction of the Authority in order to carry out its corporate purposes. Permits or licenses do not grant the Authority a beneficial interest in real property and are not considered leases, easements or other Acquisitions.

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F. Transfers of Jurisdiction

Transfers of Jurisdiction are Transactions between the Authority and other State governmental entities where jurisdiction over real property is transferred and reassigned on such terms and conditions as the Authority and the NYS Office of General Services deem proper, but the title to the real property remains in the name of the people of the State of New York.

III. GENERAL LEGAL REQUIREMENTS

All Transactions shall comply fully with applicable State, federal, and local laws, rules and regulations, including but not limited to: Article 2, Title 9 of the Public Authorities Law, Article 9, Title 5-A of the Public Authorities Law, the Lobbying Procurement Act, the requirements of the Authority's General Revenue Bond Resolution, and other applicable laws, rules, regulations, policies, procedures and executive orders.

IV. GENERAL PRINCIPLES

- A. The Authority shall maintain adequate inventory controls and accountability systems for all real property under its control.
- B. The Board shall approve all Transactions under the Authority's jurisdiction, except as otherwise delegated (see Section VII. Responsibilities and Authorizations).
- C. Transactions involving real property shall be consummated as promptly as possible. Unless otherwise provided by the Board, Board authorization for a Transaction shall be deemed expired one year following the date of such authorization unless the parties have executed a contract acceptable to the Authority for such Transaction within such one-year period. Expiration of Board authorization for a Transaction shall mean that the Transaction may no longer be consummated pursuant to such expired authorization absent further action of the Board. The Executive Director shall provide periodic reports to the Board regarding expired Transactions.
- D. The Authority may dispose of any real property not necessary for its corporate purposes or whenever the Board shall determine that such Disposal is in the interest of the Authority.

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- E. A Transaction must be resubmitted to the Board during the one-year period of authorization provided in IV.C. if any of the following circumstances occur and the Executive Director determines that the Transaction should be progressed:
1. If, in the Executive Director's determination, the circumstances change following Board action and, as a result, material Board approved terms and conditions cannot be followed.
 2. If, in the Executive Director's determination, the background information about the Transaction presented to the Board changes in any material way.
- F. Notwithstanding anything to the contrary contained in this Policy, if the Executive Director determines that it is in the best interests of the Authority to stop progression of a Board approved Transaction during the one-year period of authorization provided in Section IV.C., the Executive Director may cancel the Transaction. An information report will then be provided to the Board, at its next scheduled meeting, detailing the reasons that the Transaction was cancelled.
- G. 1. No asset owned, leased or otherwise in the control of the Authority may be sold, leased, or otherwise alienated for less than its fair market value except if:
- (a) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
 - (b) the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
 - (c) in the event the Authority seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the Authority's mission, purpose or governing statute, the Authority shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly. Denial by the governor shall take the form of a signed certification by the governor. Denial by either house of the legislature shall take the form of a resolution by such house. The governor and each house of the legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the legislature receives notification of a proposed transfer during the months of July through December, the legislature may

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take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the Authority may effectuate such transfer.

2. In the event a below fair market value asset transfer is proposed, the following information must be provided to the Authority Board and the public:
 - (a) a full description of the asset;
 - (b) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Authority Board;
 - (c) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
 - (d) a statement of the value to be received compared to the fair market value;
 - (e) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (d) of this paragraph 2 of Section IV.G., a statement of the value to the private party; and
 - (f) the names of any other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
 3. Before approving the Disposal of any property for less than fair market value, the Authority Board shall consider the information described in paragraph 2 of this Section IV.G. and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.
- H. The Authority shall use a competitive process open to the public for all Disposals, except in limited circumstances. The Authority shall document the basis for progressing a Disposal without use of a public competitive process.

All Disposals or contracts for disposal of real property of the Authority shall be made after publicly advertising for bids except in limited circumstances where Disposals

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and contracts for disposal may be negotiated or made by public auction without public advertising for bids.

One of the following conditions must be met to dispose or contract for the disposal of real property through negotiation or public auction without public advertising for bids:

1. The fair market value of the real property does not exceed fifteen thousand dollars (\$15,000);
 2. Bid prices after advertising are not reasonable, either as to all or some part of the real property, or have not been independently arrived at in open competition;
 3. The Disposal will be to the State or any political subdivision, and the estimated fair market value of the real property and other satisfactory terms of disposal are obtained by negotiation;
 4. Under those circumstances permitted by Section IV.G. of this Policy; or
 5. The action is otherwise authorized by law.
- I. The Authority shall create a clear and comprehensive record for each Transaction that documents its compliance with this Policy. Such record shall be maintained in a manner and for a period consistent with the applicable document retention policy.

V. GENERAL PRACTICES

A. Transactional Analyses

Every proposed Transaction shall have a documented analysis conducted that will address all salient real property-related issues, and that will consider all applicable alternatives listed in Section V.B. below.

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B. Types of Transactions and the Appropriate Use Thereof

1. Disposals

The Authority may receive direct inquiries for purchasing Thruway real property (e.g., easement, fee) or may determine on its own that Thruway real property is no longer needed for its corporate purposes or that disposition is in the best interest of the Authority.

The Authority may lease real property not presently required for Authority purposes but held for future use in carrying out its corporate purposes.

Disposals may be performed by the Commissioner of General Services on behalf of the Authority when the Authority has entered into an agreement with the Commissioner of General Services pursuant to Article 9, Title 5-A of the Public Authorities Law and all other applicable provisions of the Public Authorities Law.

2. Acquisitions

The Authority may acquire real property (e.g., fee, lease, easement) for a variety of purposes including, but not limited to, construction, improvement, and operation of the Thruway.

Real property may be acquired by purchase or by exercise of the power of eminent domain. When the need arises for the Authority to acquire real property via exercise of the power of eminent domain, the Authority shall take all steps to carry out the Acquisition in compliance with the Eminent Domain Procedure Law.

Acquisitions may be performed by the Commissioner of General Services on behalf of the Authority.

3. Permits Issued by the Authority

Permits may be issued where the real property is not presently required for Thruway purposes, but held for future use in carrying out its corporate purposes. Permits are revocable and used for Transactions where the real property needs to be available upon demand for Authority purposes. Unless otherwise authorized by the Executive Director or designee, where a Disposal is contemplated, an Occupancy or Work Permit will not be issued in advance of completion of the Disposal.

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Occupancy Permits shall be issued and administered in accordance with the Authority's Occupancy and Work Permit Accommodation Guidelines, and in such a way as to ensure that the Authority is receiving the appropriate level of revenue in accordance with the established Fee Policy for Thruway Occupancy Permits. Unless otherwise authorized by the Executive Director or designee, where the issuance of an Occupancy Permit is contemplated, a Work Permit shall not be issued in advance of the issuance of the Occupancy Permit.

4. Permits or Licenses Issued to the Authority

Permits or licenses may be issued to the Authority in order to allow the Authority temporary access to and use of real property not under its jurisdiction for work related to the improvement, construction, reconstruction, maintenance and operation of the Thruway when an Acquisition is not appropriate.

5. Transfers of Jurisdiction

Transfers of Jurisdiction may be effectuated to provide other State entities with property that they need for their operational purposes or to allow the Authority to obtain real property from other State entities that the Authority needs for work related to the improvement, construction, reconstruction, maintenance and operation of the Thruway.

6. Transactions with Entities Providing Tourist Information

In accordance with Section 361-c of the Public Authorities Law, the Authority is required to provide tourist information services at all service areas where food is served. The Authority may authorize Transactions to provide such services. When the use of real property associated with the provision of these services generates revenue, consideration shall be required.

7. Amendments, Extensions, and/or Renewals of Existing Permits and Leases

Occupancy Permits shall be reviewed before the next annual payment date or as soon as practicable thereafter and, if necessary, revoked or redrafted to reflect this Policy and the requisite operational and/or administrative procedures.

Leases will be reviewed at the time of the next renewal and, if necessary, amended to reflect this Policy and the requisite operational and/or administrative procedures, consistent with the terms of the lease.

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C. Use of Appraisals

1. No Disposal or Acquisition of real property, or any interest in real property, shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the Transaction, except that when the Authority acquires a leasehold interest in property such that the Authority is the tenant, not the landlord, it shall be within the Authority's discretion whether or not to obtain an appraisal.
2. At least one appraisal shall be conducted by an independent appraiser for all Disposals and Acquisitions, other than leases of property where the Authority is the tenant and it is within the Authority's discretion as to whether to obtain an appraisal. For Acquisitions of leaseholds where the Authority is the tenant, it is within the Authority's discretion as to whether to obtain an appraisal.
3. An appraisal shall be conducted or coordinated by authorized Authority staff for all Permits for which an appraisal is necessary.
4. When the need arises for the Authority to acquire real property via exercise of the power of eminent domain, the Authority shall comply with all appraisal requirements in the Eminent Domain Procedure Law.

D. Advertising and Bidding for Disposals

When advertising for bids is required: (1) the advertisement shall be made at such time, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the real property; (2) all bids shall be publicly disclosed at the time and place stated in the advertisement; and (3) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State and the Authority, price and other factors considered, provided, that any and all bids may be rejected when it is in the public interest to do so.

E. Documenting Disposals by Negotiation

At least 90 days before a Disposal is consummated, an explanatory statement for each Disposal by negotiation shall be prepared and distributed by the Contracting Officer in accordance with Article 9, Title 5-A of the Public Authorities Law detailing the circumstances of the Disposal, including but not limited to, the proposed price. The statement shall be prepared and distributed prior to bringing the Transaction to the Board for approval.

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The following Disposals by negotiation require an explanatory statement:

1. Any real property that has an estimated fair market value in excess of one hundred thousand dollars (\$100,000), except that any real property disposed of by lease or exchange shall only be subject to clauses 2 and 3 below.
2. Any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars (\$15,000).
3. Any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

F. Review by the Office of the State Comptroller (OSC)

The following Transactions shall be submitted to OSC for review and approval:

1. Disposals of real property or interests therein where the value exceeds twenty-five thousand dollars (\$25,000).
2. Acquisitions of real property or interests therein where the total payment exceeds fifty thousand dollars (\$50,000).

G. Review of Environmental Impacts

In accordance with the State Environmental Quality Review Act (SEQRA) and the National Environmental Policy Act (NEPA), the Authority shall consider potential environmental impacts and permit requirements associated with any Transaction.

H. Review by Other Agencies

Transactions shall be coordinated with local, State and federal agencies as may be required by statute or regulation. Such agencies include, but are not limited to: Federal Highway Administration, U.S. Army Corps of Engineers, NYS Department of Transportation, NYS Office of General Services, NYS Department of Environmental Conservation and NYS Office of Parks, Recreation and Historic Preservation.

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I. Reports

The Authority will develop and distribute reports regarding real property management activities as required by law, including but not limited to, annual inventory reports, annual real property acquisition and disposition reports, and disposal by negotiation statements.

VI. PROCUREMENT OF REAL PROPERTY BY EMPLOYEES

Authority employees may not have any personal interest in, or engage in, any activity that would create or appear to create a conflict with the proper discharge of their public duties. It is important, even in the absence of any impropriety, that no appearance of impropriety is given. Therefore, pursuant to the Public Officers Law, all Authority employees, their spouses and any children and stepchildren under age 18 are prohibited from procuring Authority real property or otherwise securing such property through the use of an agent or other third party.

In addition, Authority employees, other than staff members identified in this Policy or the SOPs as having responsibilities related to the management of real property, shall not disclose to any non-employee any information that they obtain regarding such property due to the nature of their employment. Any disclosure by such authorized staff shall only be made in the course of the proper discharge of their official duties.

VII. RESPONSIBILITIES AND AUTHORIZATIONS

- A. The Board shall designate a Contracting Officer who is responsible for compliance with and enforcement of this Policy as it applies to all Transactions.
- B. The Executive Director is authorized to interpret, implement, and administer this Policy and shall develop SOPs necessary to carry out its intent. These SOPs should identify the roles and responsibilities of Authority personnel who implement and administer this Policy and define the manner in which those responsibilities are to be fulfilled.

The Executive Director is also authorized to oversee the actions of Authority staff to ensure compliance with applicable laws, rules and regulations, and with this Policy.

- C. The Chief Engineer is authorized to consummate Acquisitions and the Chief Financial Officer is authorized, upon the written request of the Chief Engineer, to consummate Disposals and Transfers of Jurisdiction that may be necessary to progress capital projects in accordance with the provisions of the annual Contracts

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Program approved by the Board. All such Transactions shall be progressed in accordance with the provisions of this Policy. In general, Board approval shall not be required for such Transactions, provided however, Board approval shall be required for all Disposals for less than fair market value.

- D. The Chief Financial Officer, consistent with Resolution No. 5911, is authorized to approve Disposals valued at fifteen thousand dollars (\$15,000) or less and to take all steps necessary to implement same, provided that fair market value is obtained in exchange for such Disposals and provided further, that all such Disposals shall comply with all applicable laws, this Policy and the SOPs adopted pursuant to this Policy.
- E. The Contracting Officer or designee is authorized to approve real property Occupancy Permits. The Contracting Officer, or the Contracting Officer's designee in consultation with the Contracting Officer, is authorized to interpret the SOPs and to resolve any questions among staff regarding the SOPs.
- F. The Director of Maintenance and Operations or designee is authorized to approve real property Work Permits and to obtain permits or licenses to access or use real property not under the jurisdiction of the Authority for maintenance and operations purposes.

VIII. PENDING DISPOSALS AND ACQUISITIONS

All Disposals and Acquisitions approved by the Board prior to the effective date of this Policy that are still pending final execution shall be reevaluated by the Contracting Officer to ensure compliance with this Policy. If, upon reevaluation, the terms and conditions as authorized by the Board resolution do not comply with this revised Policy, the Contracting Officer must promptly prepare a report to the Executive Director and the Board detailing the reasons that the item(s) can or cannot be progressed. When an item cannot be progressed, the Contracting Officer, in consultation with the Executive Director, must seek further direction from the Board which may result in the item being amended, withdrawn or otherwise resolved.

CODE OF ETHICS GOVERNING BOARD MEMBERS

1. PURPOSE

This Code of Ethics is designed to promote:

- a. honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- b. full, fair, accurate, timely and understandable disclosure in reports and documents that the Authority files with, or submits to, governmental agencies and in public communications made by the Authority;
- c. compliance with applicable governmental laws, rules and regulations;
- d. prompt internal reporting of violations of this Code of Ethics to the appropriate person; and
- e. accountability for adherence to this Code of Ethics.

2. APPLICABILITY

- a. This Code of Ethics applies to the Board Members of the Authority and may be amended only by a vote of such Board Members.
- b. This Code of Ethics represents an overall ethical framework by which all Board Members should endeavor to conduct themselves. It is not an exclusive listing of all ethical rules or requirements. All Board Members should be cognizant of their responsibilities under the New York State Public Officers Law and should inquire of the Authority Ethics Officer as to whether any contemplated act, which a Board Member believes may violate these or other ethical standards, is in violation of this Code of Ethics or any other ethics law, rule or requirement.

3. GENERAL PROVISIONS

- a. Board Members shall carry out their duties with honesty and integrity.
- b. Board Members shall comply with all applicable laws, rules and regulations in the performance of their duties as Board Members of the Authority.
- c. Board Members shall exercise the utmost good faith in all transactions involving and relating to the exercise of their Authority duties and their service to the public, and should endeavor to pursue a course of conduct

which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of their public trust.

- d. Board Members shall not by their conduct give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position or influence of any party or person.
- e. Board Members shall not use or attempt to use their official positions to secure unwarranted privileges or exemptions for themselves or others.
- f. Board Members shall require full, fair, honest and accurate recording and reporting of financial and other information and will require internal controls to ensure that Authority transactions are properly authorized, that Authority assets are safeguarded, that operations are conducted in accordance with Board directives and that financial statements for external purposes are presented in conformity with generally accepted accounting principles.

4. CONFLICTS OF INTEREST

- a. Board Members shall not accept employment which will impair their independence of judgment in the exercise of their Board Member duties.
- b. Board Members shall not accept employment or engage in any business or professional activity which will require them to disclose confidential information which was gained by reason of their positions as Board Members.
- c. Board Members shall not disclose confidential information acquired by them in the course of their Board Member duties nor use such information to further their personal interests.
- d. No Board Member should have any interest, financial or otherwise, direct or indirect, or engage in any business, transaction or professional activity or incur any obligation of any nature which is in actual, potential or apparent conflict with the proper discharge of the Board Member's duties. The Board Member shall be under an ongoing obligation to disclose any actual, potential or apparent conflict of interest and shall take appropriate steps to eliminate or abate the conflict, including recusal.
- e. Board Members shall abstain from making personal investments in enterprises which they have reason to believe may be directly involved in decisions to be made by them or which will otherwise create substantial conflict between their duties in the public interest and their private interests.
- f. Board Members should perform Board Member duties impartially and diligently. A Board Member should abstain from the discussion, consideration and determination by the Board in any case, proceeding, application, or any matter in which the Board Member's impartiality might be

reasonably questioned or in which the Board Member has any conflict of interest.

- g. Board Members are prohibited from receiving compensation for appearing or rendering services against the Authority in relation to any matter.
- h. Board Members are prohibited from serving as officers of any political party or political organization or as members of any political party committee including political party district leader or as members of a national committee of a political party.

5. RECUSAL PROCEDURE

If a Board Member has a conflict of interest, financial or otherwise, with the proper discharge of the Board Member's duties, then the Board Member shall follow the procedure set forth in this Paragraph.

- a. The Board Member shall promptly disclose the Board Member's interest to the other Board Members and the Authority Executive Director, and describe all material facts concerning the interest known to the Board Member. After such disclosure, the Executive Director, in consultation with the Authority Ethics Officer, shall make a record of such disclosure and advise appropriate staff that they are prohibited from communicating with such Board Member about such matter. Further, if after such disclosure such matter is on an agenda for or is otherwise raised at a Board meeting, the Board Member shall recuse him/herself from all consideration and voting on such matter and such recusal and the reason therefore shall be recorded in the minutes of such Board meeting. As a best practice, the Board Member should leave the Board meeting (where practicable) while the other Board Members complete their discussion, consideration and vote.
- b. After full disclosure to the Board and Authority Executive Director, nothing contained herein shall be construed or applied to prohibit any firm, association, corporation or entity, in which the Board Member is a member, associate, retired member, of counsel, shareholder or owner, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with the Authority where such Board Member does not participate in any way on behalf of the party in the bidding solicitation or negotiation process, does not participate in the decision to award the contract, and does not share in the net revenues resulting therefrom, or, acting in good faith, it is reasonably believed that such Board Member would not share in the net revenues therefrom, and where such Board Member otherwise complies with all other directives provided by the Authority Ethics Officer.

6. GIFTS

No Board Member shall, directly or indirectly, solicit, accept, or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could be reasonably inferred that the gift was intended to influence the Board Member, or could reasonably be expected to influence the Board Member, in the performance of the Board Member's Authority duties, or was intended as a reward for any official action on the Board Member's part, or was a gift from an individual or entity that does business with the Authority. This provision shall not pertain to gifts received by Board Members while serving in other capacities when it is clear that such gifts were not intended to influence the Board Members with respect to their Authority duties.

7. **POST-SERVICE RESTRICTIONS**

- a. No former Board Member, within the period of two years immediately following the termination as an Authority Board Member, shall appear or practice before the Authority or receive compensation for any services rendered by such former Board Member on behalf of any person, firm, corporation, or association other than the Authority in relation to any matter before the Authority. This post-service restriction shall not apply to any appearance, practice, communication or rendition of service before the Authority, or to the receipt of compensation for any such services rendered by a former Board Member which is made while carrying out official duties as an elected official or employee of a federal, state or local government or one of its agencies. This post-service restriction shall also not apply if the Chairman provides notification to the ~~Joint~~ Commission on ~~Public~~ Ethics and Lobbying in Government that the former Board Member has expertise, knowledge or experience with respect to a particular matter which meets the needs of the Authority and is otherwise unavailable at a comparable cost.
- b. No former Board Member shall appear before the Authority with regard to any Authority case, application, proceeding or transaction in which he or she was directly concerned and personally participated, or which was under his or her active consideration, while serving as a Board Member. This post-service restriction shall not apply to any appearance, practice, communication or rendition of service before the Authority, or to the receipt of compensation for any such services rendered by a former Board Member which is made while carrying out official duties as an elected official or employee of a federal, state or local government or one of its agencies. This post-service restriction shall also not apply if the Chairman provides notification to the ~~Joint~~ Commission on ~~Public~~ Ethics and Lobbying in Government that the former Board Member has expertise, knowledge or experience with respect to a particular matter which meets the needs of the Authority and is otherwise unavailable at a comparable cost.
- c. Nothing contained herein shall prohibit a current or former Board Member from appearing before the Authority in connection with a ministerial matter.

8. DEFINITIONS

As used in this Code of Ethics:

- a. “Business” shall mean any activity conducted with the objective of obtaining money or other things of value. Such activity may be for profit or not for profit.
- b. “Confidential information” shall mean information, whether or not set forth in writing, that is available to Board Members only because of their position as a Board Member of the Authority, including, but not limited to: (i) information not subject to public disclosure under the Freedom of Information Law; (ii) information subject to the attorney/client privilege; (iii) information contained in any document labeled “confidential”; and (iv) information disclosed during an executive session of the Authority Board.