

**CODES, RULES AND REGULATIONS  
OF THE STATE OF NEW YORK**

**TITLE 21, MISCELLANEOUS**

**CHAPTER LXXIV, NEW YORK CITY  
SCHOOL CONSTRUCTION AUTHORITY**

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## **Part 9600 Guidelines for Qualification and Evaluation of Contractors, Subcontractors, Consultants, Vendors and Suppliers for Contracts on All Phases of Construction, Reconstruction, Improvement or Rehabilitation of New York City Schools**

### **9600.1 Authority.**

The New York City School Construction Authority (the authority), pursuant to section 1734 of the New York City School Construction Authority Act, establishes the following guidelines governing the qualification and evaluation of firms described in this Part.

### **9600.2 Procedure.**

(a) All interested contractors, architect/engineering firms, construction management firms, professional consultants, suppliers and vendors (for contracts of \$10,000 or more) are required to complete a prequalification application.

(b) In evaluating the applicant's qualification, the authority will take into consideration the following factors:

- (1) experience;
- (2) quality and timeliness of past performance;
- (3) financial capacity;
- (4) reliability and responsibility;
- (5) compliance with equal employment requirements including LBE, MBE and WBE programs;
- (6) recognition of New York State approved apprentice programs and compliance with wage, hour and other fair labor standards; and
- (7) integrity of the firm, its affiliates, and current and past owners and principals.

(c) The authority will maintain lists of disqualified firms, as well as prequalified firms. The authority will update these lists at least once a year.

### **9600.3 Minimum standards.**

To be prequalified, applicants must meet at least the following minimum standards:

(a) Financial capacity.

The applicant must have sufficient financial ability to undertake work in the area in which prequalification is sought. An applicant that fails to meet this standard will be unable to work for the authority until such time as it can demonstrate it has attained sufficient financial capacity.

(b) Experience.

The applicant must have sufficient experience in the relevant trade or field in which it seeks to do work. An applicant that fails to meet this standard will be unable to work for the authority until such time as it can demonstrate that it has attained sufficient experience.

(c) History of performance.

The applicant must have a demonstrated record of timely completion of quality work. Failure to meet this standard may result in applicants disqualification for a period of up to five years. A failure to meet the performance standard will be deemed to have occurred in the event of debarment, default, disqualification, a finding of “poor performer” or “not responsible” of the applicant or its affiliates by any government entity. If the applicant's failure to perform quality work in a timely manner is based on other than the findings enumerated above, the authority will evaluate the facts and circumstances on a case-by-case basis.

(d) Integrity and ethics.

Companies seeking to do business with the authority must have a reputation for and a record of law-abiding conduct and ethical business practices. Failure to meet this standard will result in the applicant's disqualification for a period of up to five years.

(1) A failure to meet the integrity and ethics standard will be deemed to have occurred in the event the applicant, its affiliates or any current or past owners or principals:

- (i) have been convicted within the past five years of a crime involving unfair or unethical business practices or acts of moral turpitude;
- (ii) have been held not responsible, denied a contract or denied approval as a subcontractor, vendor or material supplier for reasons of integrity, or for failure to cooperate with another agency's inquiries; or
- (iii) made material false statements or answers in response to questions arising out of the prequalification process.

(2) The applicant, its affiliates, or any of its current or past owners or principals may be precluded from working for the authority until there is a favorable resolution of any of the following:

- (i) pending criminal investigation;
- (ii) indictment;
- (iii) pending civil action brought by a governmental entity alleging illegal business practices.

(3) If the applicant refuses to comply with the authority's prequalification process, including requests for additional documentation, affidavits or certifications, the firm's application will be considered “incomplete,” and the company will be ineligible to work

either directly or indirectly for the authority, until all aspects of the prequalification process are complied with.

(4) In the event that the applicant knowingly and willfully submits false information for the purpose of obtaining prequalification status, the authority may disqualify the applicant permanently.

(5) If the applicant's lack of integrity and ethics arises from circumstances other than the ones noted above, the authority will evaluate the facts and circumstances on a case-by-case basis.

(e) Participation in apprentice programs.

An applicant who wishes to bid on projects estimated by the authority to be in excess of one million dollars must demonstrate to the satisfaction of the authority, that it recognizes New York State approved apprentice programs. An applicant may demonstrate its recognition of apprentice programs for example, by its participation in a State approved apprentice program.

#### **9600.4 Revocation of prequalification status.**

(a) The authority may revoke the prequalified status of a contractor on the basis of either changed circumstances or discovery of new evidence that indicates the firm does not meet the authority's standards. Following such revocation, the authority shall determine the appropriate period of disqualification in accordance with the standards enumerated in section 9600.3 of this Part. If it is determined that the contractor knowingly and willfully submitted a false instrument for the purpose of defrauding the authority or of obstructing an official investigation, the authority may revoke the contractor's prequalification status permanently.

#### **9600.5 Procedure for disqualification and revocation.**

(a) In the event the authority concludes that there may be sufficient evidence to warrant denial/revocation of a firm's prequalification, the authority shall notify the contractor of its proposed denial or revocation of prequalification status, the reasons for this denial/revocation, and the period of disqualification.

(b) A contractor so notified may request a meeting, at which the contractor shall have the opportunity to present evidence that might result in reconsideration of the authority's preliminary conclusion to deny or revoke the contractor's prequalification.

(c) The authority shall provide to the contractor final written notification of its determination.

#### **9600.6 (Repealed)**

#### **9600.7 Evaluation criteria.**

(a) A contractor's performance will be evaluated by the authority pursuant to the following criteria:

- (1) management of project;
- (2) quality of work;
- (3) recordkeeping;
- (4) subcontracting;
- (5) contract changes;
- (6) compliance with authority MBE/WBE/LBE requirements;
- (7) compliance with prevailing wage standards;
- (8) recognition of approved apprentice programs;
- (9) adherence to safety procedures; and
- (10) fulfillment of work force requirements.

(b) A marginal or unsatisfactory evaluation in any of the elements of the criteria set forth in subdivision (a) of this section, may serve as the basis for a contractor to receive an overall rating of marginal or unsatisfactory.

## **9601 (Repealed)**

# **Part 9602 Guidelines for Qualification and Evaluation of General Contractors to Perform on All Phases of Construction, Reconstruction, Improvement or Rehabilitation of New York City Schools**

## **9602.1 Authority.**

The New York City School Construction Authority (the authority), pursuant to section 1735 of the New York City School Construction Authority Act, establishes the following guidelines governing the qualification and evaluation of general contractors described in this Part.

## **9602.2 Procedure.**

(a) All interested general contractors are required to complete a prequalification application.

(b) In evaluating the applicant's qualification, the authority will take into consideration the following factors:

- (1) experience;
- (2) quality and timeliness of past performance;
- (3) financial capacity;
- (4) reliability and responsibility;
- (5) compliance with equal employment requirements including LBE, MBE and WBE programs;
- (6) recognition of New York State approved apprentice programs and compliance with wage, hour and other fair labor standards; and
- (7) integrity of the firm, its affiliates, and current and past owners and principals.

(c) The authority will maintain lists of disqualified firms, as well as prequalified firms. The authority will update these lists at least once a year.

## **9602.3 Minimum standards.**

To be prequalified, applicants must meet at least the following minimum standards:

(a) Financial capacity.

The applicant must have sufficient financial ability to undertake work in the area in which prequalification is sought. An applicant that fails to meet this standard will be unable to work for the authority until such time as it can demonstrate it has attained sufficient financial capacity.

(b) Experience.

The applicant must have sufficient experience in the relevant trade or field in which it seeks to do work. An applicant that fails to meet this standard will be unable to work for the authority until such time as it can demonstrate that it has attained sufficient experience.

(c) History of performance.

The applicant must have a demonstrated record of timely completion of quality work. Failure to meet this standard may result in applicants disqualification for a period of up to five years. A failure to meet the performance standard will be deemed to have occurred in the event of debarment, default, disqualification, a finding of “poor performer” or “not responsible” of the applicant or its affiliates by any government entity. If the applicant's failure to perform quality work in a timely manner is based on other than the findings enumerated above, the authority will evaluate the facts and circumstances on a case-by-case basis.

(d) Integrity and ethics.

Companies seeking to do business with the authority must have a reputation for and a record of law-abiding conduct and ethical business practices. Failure to meet this standard will result in the applicant's disqualification for a period of up to five years.

(1) A failure to meet the integrity and ethics standard will be deemed to have occurred in the event the applicant, its affiliates or any current or past owners or principals:

- (i) have been convicted within the past five years of a crime involving unfair or unethical business practices or acts of moral turpitude;
- (ii) have been held not responsible, denied a contract or denied approval as a subcontractor, vendor or material supplier for reasons of integrity, or for failure to cooperate with another agency's inquiries; or
- (iii) made material false statements or answers in response to questions arising out of the prequalification process.

(2) The applicant, its affiliates, or any of its current or past owners or principals may be precluded from working for the authority until there is a favorable resolution of any of the following:

- (i) pending criminal investigation;
- (ii) indictment;
- (iii) pending civil action brought by a governmental entity alleging illegal business practices.

(3) If the applicant refuses to comply with the authority's prequalification process, including requests for additional documentation, affidavits or certifications, the firm's application will be considered “incomplete”, and the company will be ineligible to work

either directly or indirectly for the authority, until all aspects of the prequalification process are complied with.

(4) In the event that the applicant knowingly and willfully submits false information for the purpose of obtaining prequalification status, the authority may disqualify the applicant permanently.

(5) If the applicant's lack of integrity and ethics arises from circumstances other than the ones noted above, the authority will evaluate the facts and circumstances on a case-by-case basis.

(e) Participation in apprentice programs.

An applicant who wishes to bid on projects estimated by the authority to be in excess of one million dollars must demonstrate to the satisfaction of the authority, that it recognizes New York State approved apprentice programs. An applicant may demonstrate its recognition of apprentice programs for example, by its participation in a State approved apprentice program.

#### **9602.4 Revocation of prequalification status.**

(a) The authority may revoke the prequalified status of a contractor on the basis of either changed circumstances or discovery of new evidence that indicates the firm does not meet the authority's standards. Following such revocation, the authority shall determine the appropriate period of disqualification in accordance with the standards enumerated in section 9602.3 of this Part. If it is determined that the contractor knowingly and willfully submitted a false instrument for the purpose of defrauding the authority or of obstructing an official investigation, the authority may revoke the contractor's prequalification status permanently.

#### **9602.5 Procedure for disqualification and revocation.**

(a) In the event the authority concludes that there may be sufficient evidence to warrant denial/revocation of a firm's prequalification, the authority shall notify the contractor of its proposed denial or revocation of prequalification status, the reasons for this denial/revocation, and the period of disqualification.

(b) A contractor so notified may request a meeting, at which the contractor shall have the opportunity to present evidence that might result in reconsideration of the authority's preliminary conclusion to deny or revoke the contractor's prequalification.

(c) The authority shall provide to the contractor final written notification of its determination.

#### **9602.6 [Repealed]**



**9602.7 Evaluation criteria.**

(a) A contractor's performance will be evaluated by the authority pursuant to the following criteria:

- (1) management of project;
- (2) quality of work;
- (3) recordkeeping;
- (4) subcontracting;
- (5) contract changes;
- (6) compliance with authority MBE/WBE/LBE requirements;
- (7) compliance with prevailing wage standards;
- (8) recognition of approved apprentice programs;
- (9) adherence to safety procedures; and
- (10) fulfillment of work force requirements.

(b) A marginal or unsatisfactory evaluation in any of the elements of the criteria set forth in subdivision (a) of this section, may serve as the basis for a contractor to receive an overall rating of marginal or unsatisfactory.

## **Part 9603 New York City School Construction Authority Procedure for Dispute Resolution**

### **9603.1 Statement of purpose.**

These procedures for the resolution of contract disputes are proposed for adoption pursuant to section 1734(9) of the New York State Public Authorities Law.

### **9603.2 [Repealed]**

### **9603.3 Mediation.**

(a) Claimant who files a notice of claim in conformance with the provisions of section 1744 of the New York State Public Authorities Law may elect to submit the matter to nonbinding mediation (“mediation”) by submitting a written notice of dispute (“notice of dispute”) to the authority's corporate secretary with a copy to the vice president of operations and the vice president and general counsel within 15 working days of the filing of the notice of claim. Claimant shall attach a copy of the notice of claim to the notice of dispute.

(b) The mediation shall be conducted by a qualified mediator with expertise in the area of the dispute. The mediator shall be selected from a list maintained by the authority but the mediator must be approved by both the claimant and the authority.

(c) Claimant and authority may agree that a single mediation shall combine disputes involving more than one claim.

### **9603.4 Confidentiality.**

(a) Mediation sessions shall be private.

(b) All records, reports or other documents considered by the mediator shall be confidential.

(c) The claimant and the authority shall agree that the mediator shall not be compelled to divulge confidential materials or to testify in regard to the mediation in any adversary proceeding or judicial forum.

(d) The claimant and authority shall agree to maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral judicial, or other proceeding:

(1) views expressed or suggestions made by the other party with respect to a possible settlement of the dispute;

(2) admissions made by the other party in the course of the mediation proceedings;

(3) proposals made or views expressed by the mediator; or

(4) the fact that the other party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

(e) There shall be no stenographic record of the mediation process.  
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**9603.5 Cost.**

The claimant and the authority shall share equally all costs of the mediation including the mediator's fee.

**9603.6 Resolution.**

(a) If the mediation does not result in the execution of a settlement agreement between the claimant and the authority, the mediator shall prepare a written advisory opinion.

(b) A copy of the advisory opinion shall be delivered to the claimant and to the authority's corporate secretary, vice president for operations and vice president and general counsel.

(c) The advisory opinion shall be a confidential document subject to the provisions of section 9603.4(b)-(d) of this Part.

## **9604 (Repealed)**

# **Part 9605 Regulations Governing Participation by Locally Based Enterprises and Graduate Locally Based Enterprises in Construction Contracts Awarded by the New York City School Construction Authority**

## **9605.1 Purpose.**

The purpose of this Part is to effectuate the provisions of article 8, title 6, section 1743.2 of the Public Authorities Law as amended and Administrative Code, section 6-108.1 as amended in relation to awarding New York City School Construction Authority (the "Authority") contracts and subcontracts to Locally Based Enterprises (LBEs) and Graduate Locally Based Enterprises (GLBEs).

## **9605.2 Applicability.**

This Part applies to all construction contracts let by the Authority except those construction contracts excluded by section 9605.3(g) of this Part.

## **9605.3 Definitions.**

As used in this Part the terms listed below are defined as follows:

(a) *Bid documents* means pre-qualification form, amendments, addenda, notice to bidders, information for bidders, contract agreement, general conditions, general requirements, supplemental general conditions, supplemental general requirements, bonds, drawings, change orders, safety manual, plans and specifications for the construction contract.

(b) *Certification documents* means documents which must be filed by a business seeking certification as LBE or as a GLBE including but not limited to: sworn affidavits by an authorized official of the business (*e.g.*, business certificate or papers of incorporation); financial and management disclosure forms for the business (*e.g.*, Federal income tax returns for the last three years which were signed by the business owner); financial disclosure forms for any employees it claims are economically disadvantaged; economic development area profiles indicating where construction work was performed during the past year and the dollar amount of such work; and signed release forms granting the authority the right to request financial information from any government agency.

(c) *City* means the City of New York.

(d) *Compliance* means a contractor or subcontractor has acted in accordance with the requirements of Administrative Code, section 6-108.1 and this Part.

(e) *Construction business* means a firm that performs heavy or general contracting, mechanical and electrical or specialty work.

(f) *Construction contract* means any contract for construction, reconstruction, rehabilitation, alteration, conversion, extension, improvement, repair, or demolition of real property contracted by the authority.

(g) *Contract* means any written agreement whereby the authority is committed to expend or does expend funds, except the term contract shall not include:

(1) contracts for financial or other assistance between the authority and a government or governmental agency;

(2) contracts, resolutions, indentures, declarations of trust, other instruments authorizing or relating to the issuance, award, and sale of bonds, certificates of indebtedness, notes, or other fiscal obligations of the authority;

(3) contracts for architectural, engineering, drafting or construction management services;

(4) emergency contracts; or

(5) contracts funded by the State or Federal government which are subject to small business or other requirements which differ and conflict with the requirements of Administrative Code, section 6-108.1 and this Part.

(h) *Contractor* means a person who is a party or proposed party to a construction contract with the Authority.

(i) *Director* means Director of the MBE/WBE/LBE unit of the authority.

(j) *Economic development area* means those areas of the city designated as eligible for participation in the Community Development Block Grant Program of the United States Department of Housing and Urban Development. A listing of areas and maps of areas which meet this definition shall be provided by the authority.

(k) *Economically disadvantaged person* means an individual who was hired within the last three tax years by a locally based enterprise or a graduate locally based enterprise or is a self-employed owner of such a business and who at time of application for locally based enterprise or graduate locally based enterprise certification is:

(1) a resident in a single person household who receives:

(i) wages not in excess of 70 percent of the lower living standard income level for the city as determined by the United States Department of Labor, Bureau of Labor Statistics; or

(ii) receives cash welfare payment under a Federal, State or local welfare program; or

(2) a member of a family which:

(i) has a family income less than 70 percent of the lower living standard income level for the city as determined by the United States Department of Labor, Bureau of Labor Statistics; or

(ii) receives cash welfare payments under a Federal, State or local welfare program; or

(3) a Vietnam era veteran as defined by applicable Federal law who has been unable to obtain nongovernment subsidized employment since discharge from the armed services; or

(4) a displaced homemaker who has not been in the labor force for five years but has during those years worked in the home providing unpaid services for family members and:

(i) was dependent on public assistance or the income of another family member but is no longer supported by that income; or

(ii) is receiving public assistance for dependent children in the home which will soon be terminated.

(l) *General contracting* means work, other than heavy construction, mechanical and electrical and specialty work consisting of construction activities normally located in or on buildings including work directly supporting these activities.

(m) *Graduate locally based enterprise* or *GLBE* is a business which after initial certification for one year or three years, has gross receipts of more than \$2,167,000 but not more than \$5,418,000 in general contracting, mechanical and electrical, specialty or heavy construction for an additional two successive years and has not been decertified.

(n) *Gross receipts* means the total gross income received by a LBE or GLBE from any source during the applicable period.

(o) *Heavy construction* means work, consisting of construction activities located on or below the earth's surface including excavation, building foundation, construction projects requiring the use of earth moving machinery or equipment and any work associated with bridges.

(p) *Locally based enterprise* or *LBE* means a business which:

(1) at the time of application for certification has been in the general contracting business, the heavy construction business, the mechanical and electrical business or the specialty business and:

(i) has received gross receipts in the last three or fewer tax years averaging an amount equal or less than \$2,167,000 on an annual basis or a higher amount reflecting a bi-annual adjustment to account for the effects of inflation, as indicated by an appropriate index of costs in the construction industry, developed by the director of the Office of Construction, Office of the Mayor; or

(ii) has been in business for less than one tax year and has received gross receipts equal to or less than \$2,167,000 or a higher amount reflecting a bi-annual adjustment to account

for the effects of inflation, as indicated by an appropriate index of costs in the construction industry, developed by the director of the Office of Construction, Office of the Mayor; and

(2) in the tax year preceding the date of application has:

- (i) earned at least 25 percent of its gross receipts from work performed on construction projects located in economic development areas; or
- (ii) employed a work force of which at least 25 percent were economically disadvantaged persons.

(q) *Mechanical and electrical* means work other than heavy construction, general contracting and specialty, consisting of construction activities primarily including installing or repairing electrical systems and plumbing, heating, ventilation and air conditioning systems.

(r) *Noncompliance* means a contractor or subcontractor has failed to act in accordance with this Part.

(s) *Person*, means any natural person, corporation, partnership, sole proprietorship or unincorporated association.

(t) *President* means president of the New York City School Construction Authority.

(u) *Specialty* means work other than heavy construction, general contracting, and mechanical and electrical, consisting of construction activities such as painting, landscaping, fencing and fire proofing.

(v) *Subcontractor* means any person having an agreement or arrangement or proposed agreement or arrangement with a contractor (where the parties do not stand in the relationship of an employer and employee) in which any portion of the contractor's duty to perform work is undertaken or assumed by such person.

#### **9605.4 Application.**

(a) A contractor or subcontractor seeking certification as an LBE or GLBE is responsible for timely submission of true and accurate certification documents demonstrating that it meets all eligibility criteria. Falsification of any documents submitted in connection with the LBE/GLBE may lead to: imposition of civil and criminal penalties as provided by law, declaring the LBE/GLBE ineligible to participate in the LBE program and debarment from the authority's pre-qualified contractor list for a period of up to five years.

(b) A subcontractor which has been proposed as an LBE subcontractor by a contractor subsequent to contract award but has not been certified as an LBE by the authority shall have its application and certification documents submitted by the contractor to the authority within 10 business days from the date that the proposed LBE subcontractor is identified.

(c) A contractor or subcontractor shall submit such additional information as may be required by the authority in connection with its certification as an LBE/GLBE. Failure to submit such information within 10 business days of the date of written request may result in the denial or revocation of certification as an LBE/GLBE.

(d) Consistent with the requirements of Federal, State and city law, the authority shall not disclose to unauthorized persons confidential business information submitted by contractors or subcontractors.

### **9605.5 Eligibility.**

(a) A contractor or subcontractor shall be certified as an LBE upon a determination by the authority that it has met the eligibility requirements set forth in this Part. The initial certification shall be effective for three years and shall expire at the end of such period.

(b) A business which has been in existence for less than one year prior to the date of application for certification and which would otherwise qualify as an LBE except that it does not meet the criteria set forth in section 9605.3(p)(2) of this Part may nevertheless be certified as an LBE provided that such certification shall expire one year after it is granted.

(c) An LBE seeking continuance of certification granted according to subdivision (b) of this section will be notified by the authority two months prior to its certification expiration to submit documents within 30 days after the date of the notification. If, after the one year certification period, the business meets all the criteria for LBE eligibility as set forth in section 9605.3(p) of this Part, certification shall be granted for two more years. This business may apply to have certification renewed after this two-year period as set forth in subdivision (d) of this section.

(d) An LBE whose certification is expiring will be notified by the authority prior to such expiration. An LBE seeking to have its certification renewed for another three-year period, shall submit certification documents within 30 days of the notification of its pending certification expiration.

(e) An applicant which has previously been certified as an LBE and which now meets the criteria for GLBE as set forth in section 9605.3(m) of this Part, shall be certified as a GLBE for an additional two years. Thereafter, it must meet the criteria for LBE eligibility as set forth in section 9605.3(p) of this Part, in order to be recertified as an LBE for an additional three years in accordance with the provisions set forth in subdivision (a) of this section.

(f) Failure to submit recertification documents within 30 days of the recertification notice as set forth in subdivision (c) or (d) of this section shall result in the expiration of LBE certification on the anniversary date.



(g) If an LBE or GLBE submits certification documents timely, as set forth in subdivision (c) or (d) of this section, and the authority is unable to make a determination before the anniversary date, the certification will continue until the authority makes a determination as to the LBE's or GLBE's status.

(h) It is the intent of this Part to qualify businesses as LBEs or GLBEs only if the ownership, management and operations of the business are conducted by persons who do not own, manage or operate other construction businesses which would otherwise be ineligible and who are not currently employed or were not employed by the ineligible company for at least six consecutive months within the year preceding the application for LBE or GLBE certification. Any business applying for LBE or GLBE certification that does not conform to this intent shall be deemed ineligible as a LBE or GLBE.

(i) A LBE or GLBE must be an independent business. A business that is a separate entity for tax or corporate purposes shall not necessarily be deemed to be an independent business. In determining whether a business is an independent business, the authority shall consider all relevant factors including but not limited to:

- (1) the date the business was established;
- (2) the identity of the principals;
- (3) the sources of financing; and
- (4) the major shareholders (if any) of the business.

A principal or shareholder in a business seeking certification as an LBE or GLBE cannot be a principal or shareholder in another construction firm where added together the two construction firms have gross receipts in excess of the limits set forth in section 9605.3(m) or (p) of this Part.

(j) The owner of an LBE or GLBE must have management and operational control. The business must not be subject to any extraordinary formal or informal restrictions which limit the discretion of the owner(s).

(k) The following types of ownership, control or circumstances concerning a business seeking certification as an LBE or GLBE shall render it ineligible for participation in the program:

- (1) ownership of the business by a non-LBE construction business;
- (2) whole or partial ownership of the business by a person who is an owner in whole or in part of another construction business when the sum of the gross receipts of these businesses exceeds the limits as provided for in section 9605.3(m) or (p) of this Part;
- (3) whole or partial ownership of a business by a person who is an owner in whole or in part of another construction business not eligible for the program;
- (4) control of the business by another construction business through substantial funding arrangements or the sharing of employees, office space or equipment without formal agreement; or
- (5) organization of a firm whose officers, directors, principal stockholders, or employees serve as the officers, directors, principal stockholders or employees of another

construction business and one concern is furnishing, or will furnish the other concern with subcontracts, financial or technical assistance, and/or other facilities for a fee or otherwise.

(l) A firm seeking LBE or GLBE certification or recertification may be audited by the authority as a prerequisite to certification. Such audit shall include, but not be limited to, a review of the following information: stock certificates; minutes of first meeting; by laws; stock transfer ledger; corporate seal or business certificate; the most recent 90 days of canceled checks; documentation of loans taken out to establish the business; copies of deposit slips verifying bank transactions; payroll records for previous four weeks leases for office or yard space; and documentation of purchase and/or leasing of equipment and vehicles. Failure to submit information in connection with audits may result in ineligibility. If a firm is declared ineligible due to this failure, it will have 10 business days to submit the requested information. At the expiration of the 10 business days, if the information has not been provided, the firm may not reapply to the authority for certification or recertification until six months after the date of that determination.

(m) If, after submitting certification/recertification documents, a business is found not to meet the requirements for LBE or GLBE certification as set forth in this Part, it may submit other certification documents for certification six months after the date it was declared ineligible.

(n) A LBE or GLBE shall notify the authority within 10 days after any change in its ownership or control. Failure to comply with this requirement may lead to decertification.

(o) A LBE or GLBE shall notify the authority of any changes to its address or telephone number within 10 business days of such change. Failure to comply with this requirement may cause its decertification.

#### **9605.6 Certification.**

(a) The authority shall have the power to certify, recertify and decertify a contractor or a subcontractor as an LBE or GLBE upon a determination that the contractor or subcontractor has met or failed to meet the eligibility requirements and conditions set forth in this Part.

(b) A contractor or subcontractor denied certification as an LBE or GLBE will be given written notice of such denial and an opportunity to appeal such denial in writing to the authority. Such appeal must be received by the authority not more than 10 business days after receipt by such contractor or subcontractor of the notice denying its certification. Such appeal shall include, at a minimum, a description of the reason(s) why the contractor or subcontractor believes the denial of certification was in error and any evidence in support of its appeal. Such contractor or subcontractor shall provide the authority with such other documentation or other information as may be requested by the authority. The decision of the authority's general counsel or his designee granting or denying such certification shall constitute the final authority determination.

(c) The authority shall notify the proposed LBE/GLBE contractor or subcontractor (and prime contractor where applicable) of its certification determination within 60 calendar days of the receipt of complete certification documents.

(d) Certification by other government entities will be considered by the authority.

### **9605.7 Goals.**

The authority shall, consistent with the requirements of applicable Federal, State and city law (including applicable competitive bidding requirements), seek to ensure that not less than 10 percent of the total dollar amount of all construction contracts awarded during each fiscal year is awarded to LBEs or GLBEs.

(b) The authority shall, consistent with the requirements of applicable Federal, State and city law, require that if any portion of a construction contract is subcontracted, not less than 10 percent of the total dollar amount of the contract shall be awarded to LBEs or GLBEs; except where less than 10 percent of the total dollar amount of the construction contract is subcontracted, such lesser percentage shall be so awarded.

(c) The authority may waive the subcontracting requirements of Administrative Code, section 6-108.1 and this Part upon a finding that:

(1) the contract involves an emergency requiring immediate attention because the public health, safety, or welfare is threatened; or

(2) for other good cause (*i.e.*, the need to expedite the bid and award of necessary construction).

### **9605.8 Implementation — LBE/GLBE prime contractor participation.**

(a) The authority shall identify all possible opportunities for LBE and GLBE prime contractors. Wherever feasible, projects shall be divided into work suitable for bidding by LBE/GLBE contractors.

(b) The authority shall, on the basis of contract size, type of work and LBE/GLBE technical and capitalization capabilities, identify classes of construction contracts which are feasible and attractive for bidding by LBE/GLBE prime contractors. The following procedures shall apply when the agency is letting such construction contracts:

(1) the authority will notify LBE/GLBE contractors 20 business days prior to anticipated bid date of such contracting opportunities;

(2) bid documents will be provided to SCA certified LBE/GLBE contractors free of charge;

(3) the authority will maintain a log of LBE/GLBE solicitation; and

(4) the authority will prepare an analysis of the number of LBE/GLBE bidders per contract and the number of LBE and GLBE low bidders.

(c) The portion of the total dollar value of a contract with a joint venture of an LBE/GLBE and non-LBE business which is equal to the percentage of the contract work to be

performed by the LBE/GLBE partner shall be applied toward the authority's prime contractor LBE/GLBE requirement.

### **9605.9 Implementation – LBE/GLBE subcontractor participation.**

(a) Bidding.

(1) The authority will apply the following procedures when bidding a construction contract which contains items suitable for subcontracting:

(i) include in the information to bidders and in all construction contracts, the provisions for LBE and GLBE subcontracting;

(ii) prepare a bid notice to be published in the *City Record* and sent to appropriate trade publications and trade associations indicating that the project contains items suitable for subcontracting to LBEs/GLBEs;

(iii) supply a list of LBEs/GLBEs certified by the authority with all bid documents;

(iv) post, at the location where bid materials are available, all bid notices;

(v) upon request, provide to LBEs/GLBEs a list of prime contractors who pick up bid documents for projects containing items suitable for subcontracting; and

(vi) emphasize the LBE/GLBE program in its agenda for pre-bid and pre-construction conference.

(b) Pre-award requirements.

(1) The authority shall seek to ensure that if any portion of a construction contract is subcontracted, that not less than 10 percent of the total dollar amount of the contract or the total subcontracted dollars (whichever is less) are awarded to LBEs/GLBEs through implementation of monitoring activities outlined below:

(i) Within five business days following notification of intent to award, the selected contractor shall submit the dollar amount and type of work to be subcontracted and a LBE participation schedule to the authority. If the schedule does not identify sufficient LBE subcontractors to meet the requirements, the apparent low bidder shall also submit documentation of its good faith efforts to meet such requirements.

(a) The LBE participation schedule shall include:

(1) the name and address of each LBE that will be awarded a subcontract;

(2) the percentage dollar amount and type of work to be subcontracted to each LBE; and

(3) the dates when the LBE subcontract work will commence and end.

(b) The following documents shall be attached to the LBE participation schedule:

(1) verification letter from each LBE subcontractor listed stating the terms of its formal agreement with the contractor; and

(2) certification documents of any proposed LBE subcontractor which is not on the authority's certified list.

(c) Documentation of good faith efforts to achieve the required LBE percentage shall include:

- (1) written notification by certified mail to authority certified LBEs soliciting bids for specific work items specifying estimated value;
- (2) written notification to NYC certified LBEs soliciting bids for specific work items specifying estimated value;
- (3) written notification to minority and women contractor associations soliciting LBE subcontractors;
- (4) demonstration of efforts made to select portions of the work for performance by LBE firms in order to increase the likelihood of achieving the stated goals;
- (5) documented efforts to negotiate with LBE firms for specific subcontracts including at a minimum:
  - (i) the names, addresses and telephone numbers of LBE firms contacted;
  - (ii) copies of information provided to LBE firms regarding the plan and specification for portions of the work to be performed;
  - (iii) documentation showing that no reasonable price could be obtained from LBE firms; and
  - (iv) a statement of why agreements with LBE firms were not reached;
- (6) a statement of the reason for rejecting any LBE firm which the contractor deemed to be unqualified.
  - (ii) Failure of the apparent low bidder to provide the information required within the allotted time shall render the bid nonresponsive and therefore, the contract may not be awarded to the bidder.
  - (iii) The authority shall incorporate into all information provided to bidders on construction contracts subject to this Part the provisions contained in items (i)(c) (5)(i) and (ii) of this paragraph.

(c) Post award requirements/contract language.

- (1) This contract is subject to the requirements of Administrative Code, section 6-108.1; article 8, title 6, section 1743.2 of the Public Authorities Law as amended and the regulations promulgated thereunder. No contract shall be executed unless and until these requirements have been complied with.
- (2) Unless specifically waived by the authority, if any portion of the contract is subcontracted, not less than 10 percent of the total dollar amount of the contract shall be awarded to locally based enterprises or graduate locally based enterprises; except that where less than 10 percent of the total dollar amount of the contract is subcontracted, such less percentage shall be so awarded.
- (3) If the contractor has not met its required LBE/GLBE percentage prior to award, the contractor shall submit documentation of its good faith efforts as prescribed in clause (b)(1)(i)(c) of this section for each proposed subcontract prior to the authority's approval of award of such proposed subcontract until the contractor meets the required percentage.
- (4) If the contractor indicates prior to award that no work will be subcontracted, then no work shall be subcontracted without the prior approval of the authority, which shall be granted only if the contractor makes a good faith effort to obtain LBE/GLBE subcontractors at least four weeks before the work is to be performed.

- (5) Prime contractors may not require performance and payment bonds from LBE or GLBE subcontractors.
- (6) LBE/GLBE participation shall be determined and applied toward meeting the 10 percent requirement on the basis of work actually performed in the following manner:
  - (i) The total dollar value of a subcontract let to an LBE/GLBE subcontractor shall be applied toward the contractor's LBE requirement. However, work further subcontracted by an LBE/GLBE subcontractor to a non-LBE/GLBE subcontractor shall not be so applied.
- (7) The contractor shall make prompt payment to all LBE subcontractors. Within 15 calendar days of receipt of any payment from the authority, the contractor shall pay each LBE subcontractor the portion of the payment from the authority representing the value of the work performed by the LBE subcontractor less an amount equivalent to the appropriate *pro rata* share of the percentage of the retention withheld by the authority from the contractor.
- (8) The contractor is strictly prohibited from withholding payment from an LBE subcontractor due to contract disputes relating to work performed under another unrelated subcontract.
- (9) The contractor is strictly prohibited from requesting or requiring an LBE subcontractor to perform work on a change order not approved by the authority and not covered under the LBE's original subcontract.
- (10) The contractor must notify the authority prior to withholding payment from an LBE subcontractor for work which the authority has paid the contractor.
- (11) The contractor shall submit to the authority with each requisition for payment, a report of payments to LBE/GLBE subcontractors.

**9605.10 Post award monitoring.**

- (a) The authority shall conduct on-site reviews of the contractor's compliance with the LBE/GLBE requirements. Such review may include interviews, visits to the actual construction site and an inspection of any records relevant to the contractor's performance.
- (b) The contractor shall cooperate fully with these reviews. Failure or refusal to furnish information or to cooperate may be deemed a breach of contract and a violation of this Part.
- (c) The authority shall review total payments of prime contractors to LBE/GLBE subcontractors to insure that the amount equals the LBE/GLBE percentage required by the contract. If the sum of LBE/GLBE payments is less than the required amount, the contractor may be found in breach of contract and sanctions may be applied in an amount commensurate with the magnitude of noncompliance.
- (d) If the authority receives notification, or otherwise has knowledge that an LBE/GLBE is experiencing difficulties with satisfactorily completing a contract/subcontract, it shall refer the applicable LBE/GLBE to a technical assistance program.

(e) The authority shall conduct a final LBE/GLBE compliance review once a contract is 95 percent complete. After review of the contractor's performance, the authority shall make one of the following determinations with respect to the contractor's compliance with the LBE/GLBE requirements:

(1) the contractor is in compliance and may requisition final payment when all other contract requirements have been satisfied; or

(2) there is reasonable cause to believe the contractor is in noncompliance.

(f) If the authority determines that a prime contractor has failed to comply with the applicable legal requirements and this Part, the authority shall impose any or all of the following sanctions:

(1) decreasing the contractor's work by an amount equal to the dollar value of the LBE/GLBE required percentage not complied with; and/or

(2) declaring the contractor in default under the contract and imposing any remedy the contract allows; and/or

(3) suspension of contractors prequalification for a minimum period of 90 days.

#### **9605.11 Procedure.**

(a) Any person who believes a violation of the requirements of article 8, title 6, section 1743.2 of the Public Authorities Law and this Part has occurred may file a complaint, in writing, with the authority.

(b) The authority shall conduct a prompt investigation of written complaints. The contractor/subcontractor involved shall cooperate fully with any investigation. Failure or refusal to furnish information or to cooperate fully with any investigation is a violation of the requirements of article 8, title 6, section 1743.2 of the Public Authorities Law and this Part and will result in declaring the applicable contractor/subcontractor in default and imposing any remedy that the contract allows.

(c) The identity of the complaining party shall be kept confidential only upon request. If such confidentiality hinders the investigation, the complaining party shall be so advised for the purpose of obtaining a waiver of confidentiality. The complaining party shall be further advised that failure to waive confidentiality may result in a determination based upon information already provided.

(d) No contractor, subcontractor or other person shall intimidate, threaten, coerce or discriminate against any individual or business for the purpose of interfering with any right or privilege secured by the requirements of article 8, title 6, section 1743.2 of the Public Authorities Law and this Part or because a complaint was filed or a person testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Part.

(e) Any complaint alleging fraud or other criminal behavior on the part of a contractor or subcontractor shall be referred to the authority's Office of the Inspector General.

(f) Upon completion of an investigation, the complaining party and the contractor/subcontractor involved shall be informed of the results of the investigation in writing. If the authority has reasonable cause to believe that the contractor/subcontractor is in noncompliance with the requirements of article 8, title 6, section 1743.2 of the Public Authorities Law and this Part, then the procedures set forth in section 9605.10(f) of this Part shall be commenced.

**9605.12 Separability.**

If any provision of this Part or the application thereof is held invalid, the remainder of this Part and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.



## **Part 9606 Guidelines for Minority and Women Business Enterprise Certification**

### **9606.1 Purpose.**

The purpose of these guidelines is to provide the criteria and procedures by which the authority makes determinations to approve, deny or revoke its certification of minority or women owned business enterprises.

### **9606.2 Definitions.**

(a) *Authority* shall mean the New York City School Construction Authority.

(b) *Applicant* shall mean a business enterprise which has applied for certification as a bona fide minority- or woman-owned business enterprise.

(c) *Business enterprise* shall mean any entity, including a sole proprietorship, partnership or corporation which is authorized to and engages in lawful business transactions in accordance with New York State law.

(d) *Certified business* shall mean a business enterprise which has been approved for minority-owned business enterprise or woman-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women.

(e) *Day* shall mean a business day unless otherwise specified.

(f) *Director* shall mean the director of the NYC School Construction Authority, Economic and Employment Opportunities Division.

(g) *Minority-owned business enterprise* shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

- (1) at least 51 percent owned by one or more minority group members;
- (2) an enterprise in which such minority ownership is real, substantial and continuing;
- (3) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (4) an enterprise authorized to do business in New York State and is independently owned and operated.

(h) [*Reserved*]

(i) *Woman-owned business enterprise* shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is:

- (1) at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;
- (2) an enterprise in which the ownership interest of such women is real, substantial and continuing;
- (3) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
- (4) an enterprise authorized to do business in New York State and which is independently owned and operated.

### **9606.3 Applicability.**

These guidelines apply to all business enterprises who wish to certify with the authority as minority or women owned firms pursuant to article 8, title 6, section 1743 of the Public Authorities Law.

### **9606.4 Eligibility criteria.**

The following criteria shall be used to determine whether a business enterprise is eligible to be certified as a minority or woman-owned business enterprise.

(a) *Ownership.* The following criteria regarding ownership shall be applied for the purpose of determining whether an applicant should be granted or denied minority or woman-owned business enterprise status, or whether such status should be revoked:

- (1) the contribution of the minority group member(s) or woman owner must be proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise;
- (2) the business enterprise must demonstrate that it is an independent, continuing entity which has been actively seeking contracts or orders and regularly and actively performing business activities;
- (3) a sole proprietorship must be owned by a minority group member or women;
- (4) a partnership must demonstrate that minority group members or women have a 51 percent or greater share of the partnership; and
- (5) a corporation must have issued at least 51 percent of its authorized voting and all other stock to minority group members or women shareholders.

(b) *Control.* An eligible applicant must be an independent business enterprise. The ownership and control by the minority group member or women must be real, substantial and continuing and must go beyond the *pro forma* ownership of business as reflected in the ownership documents. The minority group member or women owner shall enjoy the customary incidents of ownership and shall share in the risk and profits, in proportion with their ownership interest in the enterprise. Determinations as to whether minority group

members or women control the business enterprise will be made according to the following criteria:

(1) Decisions pertaining to the operation of the business enterprise must be made by minority group members or women claiming ownership of that business enterprise. The following will be considered in this regard:

(i) Minority group or women must have experience or technical competence in the business enterprise seeking certification.

(ii) Minority group members or women must demonstrate the working knowledge and ability needed to operate the business enterprise.

(iii) Minority group members or women must show that they devote time on an ongoing basis to the daily operation of the business enterprise.

(2) Articles of incorporation, corporate by-laws, partnership agreements and other agreements including, but not limited to, loan agreements, lease agreements, supply agreements, credit agreements or other agreements must permit minority group members or women who claim ownership of the business enterprise to make those decisions without restrictions.

(3) Minority group members or women must demonstrate control of negotiations, signature authority for payroll, leases, letters of credit, insurance bond, banking services and contracts, and other business transactions through production of relevant documents.

#### **9606.5 Denial of certification.**

The following types of ownership, control or circumstances concerning an applicant seeking certification as a minority or women business enterprise shall render it ineligible:

(a) ownership of the applicant by a nonminority/women owned business;

(b) control of the applicant by nonminority or women owned business through substantial funding arrangements or the sharing of employees, office space or equipment without formal agreement;

(c) where the actual management of the business enterprise is contracted out to individuals other than minority group members or women, minority group members and women must demonstrate that they have the ultimate power to hire and fire these managers, that they exercise this power and make other substantial decisions which reflect control of the business enterprise;

(d) applicants are required to conduct business activities for, generally, at least one year prior to the application date. Applicants who have been conducting business activities for less than one year, may not be able to provide sufficient information upon which a certification decision can reasonably be made, and therefore their application may be rejected.

#### **9606.6 Application intake and verification.**

(a) The authority will date stamp an application upon receiving it. If an application is received by the authority and required documents are missing, questions are unanswered or the application is not properly notarized, the authority will notify the applicant of these deficiencies. An applicant may cure the noticed deficiency by providing the authority with documents or information requested within 20 days of the date of notice.

(b) If the applicant does not cure a noticed deficiency, pursuant to procedures set forth in subdivision (a) of this section and the application remains incomplete, for at least 20 days of the date of the notice of deficiency, the applicant shall be notified, in writing, that its application has been rejected and will not be processed.

(c) An applicant may not reapply for certification for at least 120 days of the date of the notice of rejection of its application.

(d) Documentation may be required to substantiate the claim of membership in a minority group. This documentation may include, but is not limited to: birth certificates, naturalization papers, registration on Indian tribal rolls, and nonresident visas.

(e) Applicants for certification shall be required to consent to inquiries of bonding companies, banking institutions, credit agencies, contractors, affiliates and clients to ascertain the applicant's eligibility for certification. Refusal to permit such inquiries shall be grounds for rejection of a certification application.

(f) An application may be deemed complete when after a visit by the office of the authority's economic and employment opportunities division to the applicant's place of business has occurred, or, when a written notice has been sent to the applicant by the authority stating that its application is complete. Refusal to permit an inspection of its place of business shall be grounds for rejection of the application.

(g) An application may be withdrawn by an applicant, without prejudice, at any time prior to the site visit. Following the withdrawal of an application, the applicant may not reapply for certification for a period of at least 120 days.

(h) The authority shall not be required to conduct a site visit to the applicant's place of business where an out-of-state firm possesses certification from an agency in the applicant's home state which conducts a certification program recognized by the authority, or possess certification from an agency located in any other state which conducts a certification program recognized by the authority. Evidence of this certification must be submitted to the office. In those instances where an out-of-state applicant does not possess certification from a recognized certification program, the director may reject an applicant.

#### **9606.7 Notice of determination and right to appeal.**

(a) Upon completion of the authority's review of each applicant, the authority's director shall provide the applicant with written notice of a determination approving or denying certification status.

(b) In the event a determination is made to approve certification by the director, the applicant will be provided with written notice of such determination and will hold minority or women-owned business enterprise status for two years or until notified of the need to reapply at the director's request.

(c) An applicant denied certification as an MBE or WBE will be given written notification of the denial stating the reasons for denial and such notice shall also state the procedures for filing an appeal before the authority's vice president and general counsel or his designee. The applicant may request a meeting to appeal this determination. Such request for appeal must be received by the authority's vice president and general counsel within 10 business days after receipt of notice denying its certification. In the event that a request for a meeting is not made within the 10-day period, the director's determination shall be final. Such request for appeal shall include a description of the reason why the applicant believes the denial of certification was in error and any supporting documentation. The decision by the vice president and general counsel denying such certification shall constitute the final determination. In the event that the decision is to deny certification the applicant may not re-apply for certification for two years, provided however if the facts and circumstances forming the basis of the denial decision have changed significantly, the applicant may re-apply sooner.

### **9606.8 Revocation of minority or woman owned business enterprise status.**

(a) The director may revoke the minority or woman owned business enterprise status of a certified business for a period of two years, if it is demonstrated that minority group members or women no longer own and control the business enterprise:

(1) A certified business enterprise must notify the authority within 30 days of any material change in the information contained in the original application. A material change may include, but is not limited to, any of the following developments: a change in ethnicity, female percentage of ownership in the business enterprise, address, officers or services provided by the certified business. If a material change is indicated, a review may be conducted by the authority.

(b) The authority, upon receiving allegations indicating that a certified business enterprise is no longer entitled to minority or woman-owned business enterprise status may take the following actions:

(1) determine whether the allegation can be substantiated;

- (2) obtain in writing, if possible, the basis of any allegation from the person or persons making the allegation;
- (3) notify a certified business in writing upon a determination that its minority or woman-owned business enterprise status is under review by the director and may be revoked. This notice shall specify the basis for such review and any facts specifically at issue;
- (4) provide the certified business whose minority or woman-owned business enterprise status is under review, with an opportunity to respond in writing to any allegations set forth in notices of certification status reviewed within 20 days of the date of such notice, by personal service or certified mail, return receipt requested; and
- (5) meet or conduct site visits, as necessary, with minority group members or women claiming ownership and control of the certified business enterprise.

(c) If the minority group members or women claiming ownership of the certified business fail to timely respond in writing to the notice of certification status review, or fail to meet or agree to a site visit, the minority or woman-owned business status of the certified business enterprise shall be revoked by the director.

(d) The director shall notify a business of the revocation of its minority or woman-owned business enterprise status. The minority group member(s) or women claiming ownership and control of a business enterprise which has had its minority or woman-owned business enterprise status revoked, may request an appeal. Such request for appeal must be received by the authority's vice president and general counsel within 10 business days of the date of the notice of revocation and shall include a description of the reason why the minority group members or women requesting the appeal believe the revocation was an error and any supporting documentation. If a request for appeal is not made within the 10-day period, the director's determination shall be final and the business enterprise may not re-apply for certification for two years from the date of notice of revocation. Such request for appeal shall include a reason why the applicant believes the revocation of certification was in error and any supporting documents.

(e) The decision by the authority's vice president and general counsel after an appeal, revoking this certification shall constitute the final determination. Upon making a determination the authority shall forward a copy of the decision to the business enterprise by certified mail. In the event of a decision to revoke the minority or woman-owned business enterprise status of a business enterprise, the business enterprise may not re-apply for certification for two years from the date of the original notice of revocation unless facts and circumstances forming the basis of revocation have changed significantly, the applicant may re-apply sooner.

## **Part 9607 Public Access to Records**

### **9607.1 Statement of purpose.**

These rules governing public access to certain records of the New York City School Construction Authority (the authority) are promulgated for the purpose of implementing the provisions of section 87(b) of article 6 of the Public Officers Law (which article is known as the Freedom of Information Law).

### **9607.2 Application for inspection and copying of records.**

(a) A request to inspect and/or copy records of the authority shall be made to the records manager at the main office of the authority: 30-30 Thomson Avenue, Long Island City, NY 11101.

(b) Such request shall be made in writing and shall reasonably describe the records sought. Whenever possible, the person requesting the records should supply information regarding dates and title or description of the documents or other information that may help to describe the records.

(c) Records shall be made available for inspection and/or copying during regular business hours at the location or locations within the authority's facilities designated by the records manager. Such records may not be removed from the office. Arrangements may be made for obtaining copies of such records.

### **9607.3 Access and denial of records.**

(a) Within five business days after receipt of written request for records, the authority shall:

(1) provide access to the records sought, or if more than five days are required to respond to a request, receipt of the request shall be acknowledged by the authority within five business days after the request is received. The acknowledgement will give an estimate for the date when a reply will be made; and

(2) deny access to the records sought, such denial to be in writing setting forth the reason therefore and right to appeal.

(b) If the requested records cannot be located, the records manager shall certify that the authority is not custodian or that the authority is the custodian but that the records cannot be found after diligent search.

(c) Upon request, the records manager shall certify that the document provided is an exact copy of the document on file.

### **9607.4 Current list of records available for inspection and copying.**

A current list, by subject matter, of all records is maintained by the records manager, and shall be available for public inspection and copying in accordance with this Part.

#### **9607.5 Appeal from denial of access to records.**

(a) Any person denied access to any record may, within 30 days of such denial, appeal the denial in writing to the vice president and general counsel of the authority at: 30-30 Thomson Avenue, 4th Floor, Long Island City, New York 11101.

(b) The time for deciding an appeal shall commence upon receipt of a written appeal identifying:

- (1) the date of the request for records;
- (2) the records that were denied; and
- (3) the name and the return address of the applicant.

(c) The vice president and general counsel shall review the matter and affirm, modify or reverse the denial stating in writing to the person making the appeal the reasons for such affirmation or modification making the appeal. Copies of appeals received and ensuing determinations will be immediately forwarded to the Committee on Open Government.

#### **9607.6 Fees for services.**

(a) It is the policy of the authority to provide routine information to permit public inspection of records without charge. Fees may be charged:

- (1) for reproduction, duplication, or copying of records; and
- (2) where a fee is otherwise prescribed by law.

(b) Records will be photocopied by the authority if practicable. The person requesting a copy will be charged a fee of 25 cents per page for copies not exceeding 9 × 14 inches or the actual cost of reproducing such records if larger copies are required. If it is not practicable for the authority to photocopy any such record, it will be copied commercially and the person requesting the copy will be charged a fee equal to the cost of such commercial reproduction.

(c) The fee for a computer printout shall be 50 cents per page.

(d) The fee for the transcription of any minutes or other untyped information shall be computed at the rate of \$5 per hour; or at the cost to the authority.

(e) Any fee charged by the authority pursuant to this Part shall be paid by the person making the request, by check, money order or cash, in advance of the delivery of any record referred to in this Part.

#### **9607.7 Creation of records.**



Documents will not be created by compiling selected items from other documents at the request of a member of the public, nor will records be created to provide the requesting party with data such as ratios, proportions, percentages, frequency distributions, trends, correlations or comparisons.

**9607.8 Public notice.**

A notice containing the job title, name and business address of the records manager, the name, job title, business address and telephone number of appeal person; and the location where records can be seen or copied, shall be posted in a conspicuous location wherever records are kept.

**9607.9 Information exempt from disclosure.**

The records manager shall deny a request for public access to records or portions thereof which the records manager determines are exempted from disclosure pursuant to Federal or New York State statutes.