



Battery  
Park  
City  
Parks



# Procurement Guidelines

## May 5, 2015

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## 1. DEFINITIONS

The following terms, for the purposes of these Guidelines, shall mean:

- “Authority” shall mean the Hugh L. Carey Battery Park City Authority.
- “Bid” shall mean an offer or Proposal submitted by a Bidder to provide a specified product or service at a stated price for the stated contract term.
- “Bid Log” shall mean a log maintained at the reception desk documenting when bids are received, secured and distributed.
- “Bid Opening” shall mean the formal process in which sealed Bids are opened, in the presence of one or more witnesses, at the time and place specified in the Solicitation.
- “Bidder” shall mean any individual, business, Vendor or other legal entity, or any employee, agent, consultant or person acting on behalf thereof, that submits a Bid in response to a Solicitation.
- “Board” shall mean the Authority’s Board of Members and/or BPCPC’s Board of Directors.
- “BPCPC” shall mean the Battery Park City Parks Conservancy Corporation.
- “Centralized Contract” shall mean Procurement Contracts let by other public entities pursuant to a competitive process, including those contracts of the State of New York (e.g., New York State Office of General Services (“OGS”) and the United States General Services Administration (“GSA”).
- “Commodities” shall mean material goods, supplies, products, construction items or the standard articles of commerce (other than technology) that are the subject of any purchase or exchange.
- “Competitive Procurement Method” shall include: (i) Solicitations, including requests for proposals (“RFP”), requests for information, invitations for Bids (“IFB”), requests for quotations and requests for qualifications; (ii) Procurements made pursuant to Centralized Contracts; and (iii) any other competitive method of Procurement that is consistent with these Guidelines.
- “Contractor” shall mean a person or organization that enters into a Procurement Contract with the Organization.
- “Cost Proposal” shall mean the part of any Bid that sets forth the price for which the Bidder is offering to provide the Organization with the services/goods described in a Solicitation.
- “Department Head” shall mean the President, General Counsel, Chief Financial Officer, Vice President of Administration, Vice President of Real Property, Vice President of Human Resources, Vice President of External Affairs or the Executive Director of BPCPC, or as otherwise designated by the President.

- “Designated Contact” shall mean the person identified in a written Solicitation as being in charge of accepting all responsive Bids, and who may receive and send correspondence with Bidders during the Restricted Period.
- “Discretionary Procurement” shall mean a purchase either i) in an amount below \$50,000, or ii) made from New York State small business concerns or M/WBEs, or for recycled or remanufactured Commodities or technology, in an amount not exceeding \$200,000.
- “Emergency” shall mean an urgent and unexpected situation where health, public safety or the conservation of public resources is at risk.
- “Field Emergency” shall mean a situation resulting from an unforeseen field condition that threatens to significantly disrupt or delay a project, or create or perpetuate an unsafe condition or environment, as determined by a Department Head, and as approved, prior to commencement of any work related to the Field Emergency, by the President.
- “Form, Function and Utility” shall mean the minimum essential requirements that will meet the Organization’s needs. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.
- “Guidelines” shall mean the Organization’s Procurement guidelines as delineated herein.
- “Invitation for Bid” (“IFB”) shall mean a competitive Solicitation seeking Bids for a specified Commodity, pursuant to which award is made to responsible Bidder(s) submitting the lowest price.
- An “M/WBE” shall mean any certified business enterprise, including a sole proprietorship, partnership or corporation that is: i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are Minority Group Members, as defined below, or women, or in the case of a publicly-owned business, ownership of at least fifty one percent of the common stock or other voting interests by Minority group members or women; ii) an enterprise in which ownership by Minority Group Members or women is real, substantial and continuing; iii) an enterprise in which the Minority Group Members or women own and exercise the authority to independently control the day-to-day business decisions of the enterprise; and iv) an enterprise authorized to do business in New York State, independently owned and operated, and not dominant in its field.
- A “Minority Group Member” shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: i) Black persons having origins of any of the Black African racial group not of Hispanic origin; ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; iii) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or iv) Native American persons having origins in any of the original peoples of North America.
- “New York State Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods that are sought by the Organization and that are substantially

manufactured, produced or assembled in New York State, or services that are sought by the Organization and that are substantially performed within New York State.

- “New York Resident” shall mean a natural person who maintains a fixed, permanent and principal home located within New York State, to which such person, whenever temporarily located, always intends to return.
- “Organization” shall mean the Authority and/or BPCPC.
- “Procurement Contract” shall mean any written agreement to which the Organization is a party for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more.
- “Procurement” shall mean purchase or acquisition of goods or services of any kind, including, but not limited to, non-professional services, such as construction, and Professional Services, which, actually or by estimation, total \$5,000 or more. However, any purchase under \$5,000 shall constitute a Procurement where the Organization has purchased or intends to purchase substantially similar goods or services from the same Vendor within one calendar year of such purchase and the aggregate value of such purchases exceeds \$5,000.
- “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.
- “Professional Services” shall mean services, such as legal, accounting, management consulting, investment banking, financial, insurance, planning, training, statistical, research, public relations, architectural, engineering, surveying or any other services of a similar nature.
- “Proposal” shall mean a Bid received by the Organization in response to an RFP.
- “Purchase order” shall mean a contract for the purchase of a commodity(ies).
- “Restricted Period” shall mean the period from the date of the earliest notice of intent to solicit Bids through the date of the final award, and, if applicable, approval of the contract by the Office of the State Comptroller, during which all Bidders or potential Bidders are restricted from making contact with anyone other than the Designated Contact or the Director of Diversity.
- “Single Source” shall mean that although two or more vendors can supply the required Commodities or services, upon written findings setting forth the material and substantial reasons therefor, the Organization concludes that: (i) one particular Vendor has unique knowledge or expertise with respect to the required service, good or material rendering the use of competitive procedures impractical; or (ii) there is a continuing need for existing services to provide continuity to the orderly development and fiscal management of a project; or (ii) other material or substantial reasons exist for awarding the contract on other than a competitive basis.
- “Sole Source” shall mean only one Vendor is capable of supplying the required Commodities or services.

- “Solicitation” shall mean an oral or written invitation, issued by the Organization, for vendors to submit Bids to provide the goods or services described in such invitation.
- “Vendor” shall mean a supplier/seller of Commodities or services.

## **2. INTRODUCTION.**

### **2.1. Introduction and Purpose**

These Guidelines apply to the use, award, monitoring and reporting of Procurement Contracts by the Organization.

The Organization shall use its best efforts to secure Bids from Vendors by using a Competitive Procurement Method, except as otherwise provided in these Guidelines.

Any deviation from, or waiver of the requirements of, these Guidelines must be approved in writing by the President.

### **2.2. Application and Purpose**

These Guidelines apply to all Procurements. For the purpose of these Guidelines, Procurements shall not include: memberships in various industry groups, professional societies and similar cooperative associations; any cooperative projects or Procurement activities conducted or sponsored by such organizations in which the Organization participates; direct purchase advertising through radio, television or print media; tuition, conferences, seminars and other comparable activities; or transportation or other travel related expenses.

### **2.3. Third Party Rights; Effect on Awarded Contracts**

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

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

### **2.4. Administration of the Guidelines**

The Chief Contracting Officer, in consultation with the General Counsel, is responsible for ensuring that these Guidelines are followed by the Organization. The Organization must prepare and the Board must approve the Guidelines annually. Any interim modifications to the Guidelines must be approved by the Vice President of Administration, the General Counsel and the President. The Chief Contracting Officer is also responsible for developing and maintaining standard templates to be used in the Procurement process, including but not limited to:

- Checklist of required actions and components to ensure each Procurement complies with these Guidelines;
- Bidder responsibility checklist;
- Request for proposals or other form(s) of Solicitation;
- Technical evaluation instrument, including the rating score sheet; and
- Memo in support of the Procurement.

All requirements, including insurance and M/WBE compliance, shall be tracked in a database by the Chief Contracting Officer, or his or her designee.



## **2.5. Procurement Vehicles**

The Organization undertakes Procurements to address a wide range of needs. To meet its varying needs and their Form, Function and Utility requirements, the Organization must first identify its specific need(s), relevant requirements and goals and then consider the potential sources for the Procurement listed below, in that order:

- First: Preferred source offerings, as set forth in Section 2.5.1 of these Guidelines;
- Second: Centralized Contracts from OGS or GSA for services, technology and commodities; and
- Third: A Discretionary or competitive Procurement, based on the total value of the Procurement.

### **2.5.1 Preferred Source**

The Organization must purchase Commodities from preferred sources in the following order, if available:

- First: The Department of Correctional Services' Correctional Industries Program; and
- Second: From the approved, charitable, non-profit making agencies for the blind.

With respect to services, if more than one preferred source meets the Organization's Form, Function and Utility requirements, equal priority shall be accorded to the services rendered and offered for sale among the approved charitable, non-profit making agencies for the blind, other severely disabled persons, qualified special employment programs for mentally ill persons, and qualified veterans workshops. If more than one preferred source meets the Organization's requirements, cost shall be the determining factor.

Even if using a preferred source, an attempt to obtain competing quotes must be made and documented in writing, and if applicable, the reason for selecting the preferred source instead of the lowest Bidder should be documented.

### **2.5.2 Non-Discretionary Procurement Contracts Exempt from the Competitive Procurement Method:**

The following types of Procurement Contracts are exempt from the Competitive Procurement Method but must satisfy all other applicable Procurement award and approval requirements set forth in these Guidelines:

- Sole Source Contract - the Organization must document in writing the findings demonstrating that the proposed Vendor is a Sole Source.
- Single Source Contract - the Organization must document in writing the findings demonstrating that the proposed Vendor is a Single Source.
- Emergency Contract - the Organization must document in writing that an Emergency exists and shall make a reasonable attempt to obtain quotes from at least three Vendors. Where an Emergency Contract is also a Field Emergency, the Organization must comply with the requirements for both an Emergency Contract and a Field Emergency, as set forth in Section 5.5.4.

- Contract for legal or other specialized Professional Services is required for which the quality, style or skill of such services may be individuated or particular to a person or Vendor; and
- Contract related to required annual operating expenditures such as payments required by law, compliance obligations, payments to utility providers and other payments required by Contracts, agreements and leases (e.g. payment to City or State, rent, insurance premiums, credit rating agencies, etc.).

### **2.5.3 Discretionary Procurements**

Discretionary Procurements are not subject to the Competitive Procurement Method.

Before making a Discretionary Procurement, the staff member initiating the Procurement must:

- o Ensure that the Commodities and services to be acquired meet the Organization's Form, Function and Utility needs;
- o Consult with the Director of Diversity to identify any potential M/WBE Vendors;
- o Make a reasonable attempt to obtain a quote from at least three different Vendors, including any identified potential M/WBE Vendors;
- o Either document the attempt to obtain three quotes or record the quotes received, and include such information in the memorandum required by Section 5.1;
- o Document and justify the selection of the Vendor;
- o Document and justify the reasonableness of the price to be paid;
- o Verify the selected Vendor is responsible; and
- o Comply with the Organization's internal policies and procedures.

An Amendment may not be made to a Discretionary Procurement if such an amendment would cause the overall contract value to exceed \$50,000, or \$200,000 for Procurements from M/WBEs and New York State small businesses, unless the Procurement is determined to be a Sole Source, a Single Source, or an Emergency. A non-competitive Procurement may not be made from a Vendor that is already providing, or has provided, a substantially similar service or good pursuant to a Discretionary Procurement made within the prior six (6) months, except as approved by the President. For the purpose of this section, a Discretionary Procurement is made when a Procurement Contract is fully executed.

### **2.5.4 Purchase Orders**

A Purchase Order is a kind of Procurement Contract and is subject to all the rules and requirements for Discretionary and/or competitive Procurements, depending on the Purchase Order's value, as set forth in these Guidelines.

## **2.6. Minority and Women-Owned Business Enterprises**

To promote and assist participation by M/WBEs certified by the Empire State Development Corporation, the Organization shall follow the provisions of Article 15-A of the New York State Executive Law ("Article 15-A") that apply to the selection and award of Procurement Contracts. The Organization shall identify those areas or types of contracts for which M/WBEs may best provide Bids so as to maximize participation by such enterprises and facilitate a fair share of awarded contracts to such enterprises.

The Organization shall:

- (i) Conduct Procurements in a manner that will enable it to achieve the maximum feasible portion of the M/WBE goals established for Procurement Contracts.
- (ii) Affirmatively promote and assist M/WBE participation in Procurement Contracts.
- (iii) Set and evaluate goals for M/WBE participation, including joint ventures, in each Solicitation.
- (iv) Consider the severability of bundled contracts; and
- (v) provide a current list of certified M/WBEs to prospective Contractors. The Organization shall consult federal requirements regarding M/WBE opportunities and consult the most recent disparity study pursuant to Article 15-A.

The Organization shall appoint a Director of Diversity, who will promote and assist in participation by M/WBEs, utilization of M/WBEs as subcontractors and suppliers, and the utilization of partnerships, joint ventures or other similar arrangements between M/WBEs and other Contractors. Specifically, the Director of Diversity shall be responsible for:

- Providing notice of opportunities to M/WBEs and organizations that serve M/WBEs;
- Maintaining lists of qualified certified M/WBEs and updating such lists regularly;
- Consulting lists of M/WBEs maintained by the State's Department of Economic Development;
- Establishing M/WBE goals for participation and utilization as subcontractors and suppliers under Procurement Contracts; and
- Monitoring M/WBEs participation and utilization in Procurement Contracts.

## **2.7. New York State Business Enterprise**

In accordance with the State Finance Law Section 139(i), the Organization shall promote the participation by New York State Business Enterprises and New York State Residents in Procurement Contracts as follows:

- a) When applicable, the Organization shall, in consultation with OGS, consider the specifications of New York State Business Enterprises in developing Solicitations for the purchase of goods and shall utilize stock item specification forms prepared by OGS.
- b) With the cooperation of the Commissioner of Economic Development and through cooperative efforts with Contractors, the Organization shall notify New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts with a value estimated to be equal or greater than one million dollars (\$1,000,000) and the Organization shall promulgate procedures which will assure compliance by Contractors with such notification as a condition of awarding Procurement Contracts.
- c) Contractors shall, as supplementary materials to their Bids, document their efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on Procurement Contracts equal to or greater than one million dollars (\$1,000,000) and attest to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.
- d) The Organization, with the cooperation of the Commissioner of Economic Development and through cooperative efforts with Contractors, shall provide for the notification of New York State Residents of employment opportunities arising out of Procurement Contracts with a value estimated to be equal to or greater than one million dollars (\$1,000,000) and shall require Contractors submit post-award compliance reports

documenting their efforts to provide such notification through listing any such positions with the community services division of the Department of Labor, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

- (e) The Organization shall include in all Solicitations a statement that:
  - (i) Information concerning the availability of New York State subcontractors and suppliers is available from the New York State Department of Economic Development, including the directory of certified M/WBEs.
  - (ii) Notifies potential Bidders located in foreign countries that the Organization may assign or otherwise transfer offset credits created by a Procurement Contract to third parties located in New York State.
  - (iii) Informs potential Bidders that it is the policy of New York State to encourage the use of New York State subcontractors and suppliers, and to promote the participation of M/WBEs, where possible, in the Procurement of goods and services;
  
- f) The Organization shall notify the Commissioner 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 equal to or greater than one million dollars simultaneously with notifying the successful Bidder therefor.

## **2.8. Bid for Multiple Contractors**

Through the Competitive Procurement Method, the Organization may issue a Solicitation for the selection of multiple Contractors to provide goods and/or services as described in the Solicitation. Individual task work orders may be issued to such Contractors on an as-needed basis, however the aggregate value of the task work orders issued to any one Contractor may not exceed the contract value for such Contractor.

## **2.9. Limitations Set By Organization**

The Organization shall not refuse to negotiate with any Professional Firm solely because the ratio of reasonable overhead costs to labor costs, or the hourly labor rate in any labor category of the Professional Firm, exceeds a limitation set by the Organization in the determination of the reasonableness of the estimated cost of services to be rendered by the Professional Firm, but rather the Organization should also consider the reasonableness of the cost of the service to be provided, based on the total estimated cost of the service, which should include, among other things, direct labor costs, allowable indirect costs, other direct costs, and negotiated profit.

## **2.10. Pre-qualification of Vendors for Professional Services**

The Organization may, in accordance with these Guidelines, pre-qualify multiple Vendors to provide Professional Services to the Organization and, at such time as the Organization determines such Professional Services are required, it may then enter into a Procurement Contract with the appropriate pre-qualified Vendor.

## **2.11. Limitations on Contracts Involving Former Officers and Employees**

The Organization shall not enter into Procurement Contracts with former officers or employees, or any entity employing such officers or employees, or any entity in which such officers or employees have an interest, unless such contract would otherwise be compliant with the Organization's policies regarding conflicts of interest and the applicable provisions of the Public Officers Law.

### **3. GENERAL REQUIREMENTS**

#### **3.1 Advertising Procurement Opportunities**

The Organization must advertise a Procurement opportunity in the New York State Contract Reporter when the actual or estimated amount of the Procurement is \$50,000 or more, except for Procurement Contracts being (i) awarded on an Emergency basis or (ii) re-bid or re-solicited for substantially the same goods or services, within forty-five business days after the date Bids were originally due. In addition, as a best practice, the Organization should also advertise its Procurement opportunities in other sources such as trade publications, journals, and newspapers when possible and appropriate, as well as Organization websites and mailing lists.

Advertisements shall provide prospective Bidders with an overview of the proposed Procurement, including a brief description of the Commodities or services sought, the contract period, the Bid due date, the address where Bids are to be submitted, a description of any eligibility or qualification requirement or preference and contact information.

#### **3.2 Reserved Rights**

Any published Solicitation should state the Organization's reserved rights in the conduct of such Bid process, including, where applicable, the right to:

- Reject any or all Bids received in response to the Solicitation;
- Withdraw the Solicitation at any time, at the Organization's sole discretion;
- Make an award under the Solicitation in whole or in part;
- Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- Seek clarifications and/or revisions of the Bid or any part of the Bid;
- Use information obtained by the Organization through site visits; interviews; investigation of a Bidder's qualifications, experience, ability or financial standing; and any other material or information provided by or received from the Bidder during the Bid process;
- Prior to the Bid Opening, direct Bidders to submit Bid modifications addressing subsequent amendments to the Solicitation;
- Change any of the scheduled dates;
- Waive any non-material requirements;
- Negotiate with the selected Bidder within the scope of the Solicitation and in the best interests of the Organization;
- Conduct contract negotiations with the next responsible Bidder if the Organization is unable to finalize contractual terms with the first selected Bidder;
- Utilize any and all ideas submitted in the Bids received; and
- Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation.

#### **3.3 Procurement Lobbying Law**

A Bidder is restricted from making "contacts," defined as communications intended to influence the procurement during the restricted period to any person at the Organization other than the Designated Contact or the Director of Diversity. Contacts permitted during the restricted period are set forth in State Finance Law §139-j (3)(a).

Any Organization member, officer or employee who becomes aware that a Bidder has made a contact (as defined in the previous paragraph) regarding the Procurement during the

Restricted Period shall immediately notify the Chief Contracting Officer, or other designated official, of such contact.

### **3.4 Determination of Vendor Responsibility**

The Organization must make a determination that a Bidder is responsible prior to awarding that Bidder a contract. The Chief Contracting Officer, or his/her designee, shall determine whether there is a reasonable assurance that the Bidder is responsible based on factors enumerated in a Vendor responsibility checklist, including, but not limited to, the Bidder's:

- Financial and organizational capacity;
- Legal authority to do business in New York state;
- Integrity of the owners/officers/principals/members and contract managers;
- Past performance on prior government contracts; and
- Compliance with the Procurement Lobbying Law and all material terms of the Solicitation.

Before finding a Bidder non-responsible, the Chief Contracting Officer shall provide the Bidder with the opportunity to explain its position in writing, or, upon the Chief Contracting Officer's discretion, in person at a responsibility meeting. Any determination of non-responsibility shall be in writing and provided to the Bidder.

### **3.5 Monitoring of Procurement Contracts**

Performance of Procurement Contracts must be monitored by the initiating department to ensure that the scope of work or services to be provided are being/have been performed and that the established starting and completion dates for major components of the contract are being/have been met. All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head.

## **4. SELECTION PROCESS**

### **4.1. Introduction**

A Solicitation issued by the Organization shall describe the services or goods the Organization is seeking to procure. Each Solicitation shall clearly convey all the information needed for potential Bidders to submit a complete and competitive Bid. Solicitations must be approved by the General Counsel's Office, the Chief Financial Officer and the President before publication.

A Vendor who participates in the development or writing of the specifications for a Solicitation, or as an advisor during the evaluation process, as set forth in Sections 4.5 and 4.6, is prohibited from being a Bidder for that Procurement.

### **4.2. Solicitation Content**

All Solicitations must include the criteria to be used in evaluating Bids and how those criteria will be weighted. Solicitations for a Commodity of a specific make and model may have cost as the only evaluation criteria.

Solicitations for services should also include:

- Description of program objectives and background;
- Scope of services to be provided; and
- Detailed requirements and specifications.

Solicitation for Commodities should include product specifications in one of the following manners:

- Make and Model or Equal – If the Procurement is not limited to a specific brand, the Solicitation may use a brand name and model as a reference to describe requirements such as functionality, style or capacity.
- Make and Model Specific - If the Procurement is limited to a specific brand, the Solicitation should state that only Bids for the specified items and brands will be considered, and that no substitutions will be considered where only one product(s) (i.e., specific brand(s)) meets the Organization's needs.
- Technical Specifications - The Solicitation may describe the product, usually detailing the physical components, method of assembly and, in some cases, chemical composition.
- Performance Specifications - The Solicitation may describe the performance standards required for the product and/or service being procured and the Bidder must ensure that the product or service offered will meet the performance specifications.

The Chief Contracting Officer shall develop and maintain templates, incorporating all relevant requirements set forth in these Guidelines, to be used by the Organization for all written Solicitations. Solicitation templates may differ for Procurements for services, which involve several evaluation criteria, and Commodities, which will be awarded to the responsive Bidder offering the lowest cost.

### **4.3. Distribution of Solicitations and Receipt of Bids**

Any Competitive Procurement Method utilized by the Organization must include the following steps.

#### **4.3.1 Advertisement of the Solicitation**

The requirement to advertise Solicitations in the New York State Contract Reporter is discussed in Chapter 2.

#### **4.3.2 Distribution of the Solicitation**

Once the Solicitation is finalized, the Organization should make reasonable attempts to distribute the Solicitation to all known potential Bidders and any Bidder that requests a copy as a result of the advertisement. Each Solicitation must be posted to the Organization's website but may also be distributed via postal mail, e-mail or other means.

#### **4.3.3 Receipt of Bids**

As noted above, the Solicitation must state the date and time that Bids are due. Late Bids cannot be accepted, except, upon approval by the President, in extraordinary instances where a public emergency prevented timely submission. The Chief Contracting Officer must certify that Bids were received in accordance with the terms of the Solicitation.

#### **4.3.4 Other Requirements:**

- o All Bids shall be received at one designated location at the Organization's offices and, immediately upon receipt, the envelope shall be stamped with the time and the date received.
- o Sealed Bids shall be immediately secured and locked in a secure location.
- o The Bid Log shall be maintained at the reception desk. Comments on the condition of the envelope shall also be recorded in the Bid Log.
- o A Bid Opening shall occur after the due date for receipt of Bids set forth in the Solicitation. All Bids shall be opened at the same Bid Opening.
- o During the Bid Opening, Bids shall be signed out in the Bid Log by the person removing them. The persons attending the Bid Opening shall sign a pre-prepared list of their names, which shall become part of the Procurement record for each Procurement Contract.
- o The Designated Contact, the project manager assigned to the project, and the Chief Contracting Officer, or his/her designee, shall be present at each Bid Opening.
- o All Bids, including the time stamp and envelope, or shipping label from the shipping materials, shall be retained for 6 years.
- o All Bids must be submitted in writing, but can also be submitted in electronic form.

Note, where a Solicitation requires submission of the Cost Proposal in a sealed envelope separate from the rest of the Bid documents, the Cost Proposals received in response to that Solicitation will remain sealed at the Bid Opening and, pursuant to Section 4.5.4, will not be provided to the Evaluation Committee for review until after an initial scoring for the technical evaluation.

#### **4.4. Evaluation Team**

For each RFP<sup>1</sup>, there shall be an evaluation committee consisting of staff members designated by the President or his/her designee (the "Evaluation Committee") who are responsible for evaluating each Proposal; however, for any RFP, the President or his/her

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<sup>1</sup> For convenience, Sections 4.4 through 4.6 discuss the evaluation process of an RFP but are applicable to any solicitation for competitive Bids requiring a technical evaluation.



designee, may designate the Director of Diversity as solely responsible for evaluating the W/MBE part of each Proposal. The CCO shall provide the Evaluation Committee with all relevant Proposal materials, in accordance with these Guidelines, including, but not limited to, the Proposals, the RFP, and any addenda to the RFP. The evaluation process, including any numerical scores, shall be documented in reasonable detail. If cost is one of the quantified evaluation criteria, separate teams may be used to conduct the technical and Cost Proposal evaluations.

#### **4.5. Conducting the Technical Evaluation**

The technical evaluation measures the extent by which a Bid will meet the Organization's needs and assesses the strengths and weaknesses of each Bid. The main steps for performing the technical evaluation are discussed below.

##### ***4.5.1 Development of the Technical Evaluation Criteria***

The criteria selected for evaluation must reflect the Organization's objectives, scope of services, and requirements as set forth in the RFP. Examples of typical technical evaluation criteria include, but are not limited to:

- o Work plan and methodology to achieve desired end results;
- o Degree to which the Proposal satisfies mandatory, optional, desirable and/or alternative green performance standards;
- o Experience of the Bidder in providing the required services and/or deliverables;
- o Management capability of the Bidder;
- o Bidder's overall past performance;
- o Qualifications and experience of the Bidder's proposed staff;
- o Conformance with the schedule of work set forth in the RFP; and
- o Bidder references.

##### ***4.5.2. Assignment of Values to Technical Evaluation Criteria***

The methodology for evaluating Proposals must be established before the initial receipt of Proposals. Once the technical evaluation criteria have been determined, values must be assigned to the criteria and any sub-criteria. The evaluation criteria and the assigned values must be consistent with any information provided in the RFP.

Alternative concepts for assigning value to the technical criteria may be permissible to account for the nature of the Procurement. In such instances, the Chief Contracting Officer shall verify with the General Counsel before issuance of the RFP.

##### ***4.5.3 The Technical Evaluation Instrument***

The Evaluation Committee must use the evaluation instrument to apply the evaluation criteria to the Proposals, including the assigned value for each criterion. The evaluation instrument consists of a series of documents used during the evaluation process, including but not limited to:

- o Rating sheet which defines allocation of points for each criterion;
- o Completed rating sheets recording each evaluation committee members' scores;
- o Cost Proposal evaluation, when evaluating cost pursuant to Section 4.6;
- o Summary rating sheet tallying the scores of all committee members; and
- o Reference checks.

A subject matter expert who is not a member of the Organization's staff may be used to assist with evaluations, provided that the General Counsel's Office determines there is no conflict of interest and approves a confidentiality and conflict of interest statement signed by such subject matter expert.

#### **4.5.4 Scoring Methodology**

Each Proposal shall be reviewed for compliance with the minimum mandatory technical requirements set forth in the RFP. Scores for the pre-determined criteria must be recorded by the Evaluation Committee on the technical evaluation instrument in accordance with the pre-determined criteria and sub-criteria, if applicable. Provided that prospective Bidders are so advised, information beyond that provided in the written Proposals may be considered in order to determine a score, such as:

- o Product or service demonstrations and presentations;
- o Reference checks (staff and/or company performance);
- o Site visits;
- o Interviews of key representatives and proposed staff of the Bidder;
- o Consultation with relevant technical advisors;
- o Written Proposal clarifications; and
- o Rating services (such as Moody's or Dun & Bradstreet).

The Organization may waive mandatory requirements in the RFP that are not material, provided that the waiver neither:

- o disadvantages the Organization;
- o uniquely benefits the selected Bidder; nor
- o prejudices any non-winning Bidder or potential Bidder.

After performing an initial technical evaluation, the Evaluation Committee may determine that the quality and number of Proposals received were sufficient to justify eliminating Bidder(s) from evaluation based solely on the content of the Proposal(s). The determination to eliminate a Bidder(s) from consideration must be justified and documented, including but not limited to recording of the initial rating sheets. After determining which Bidders will be eliminated from further consideration, if any, and documenting the reasons justifying such elimination, the Evaluation Committee may open and review the Cost Proposals of the remaining Bidders before conducting interviews. Upon completion of all external evaluation criteria (i.e., interviews, site visits) as set forth in the evaluation instrument and the RFP, the initial technical evaluation scores shall be adjusted and finalized to incorporate such other criteria.

#### **4.6. Conducting the Cost Evaluation**

RFPs that include cost as one of the quantified evaluation criteria must use the following method for evaluation of the Cost Proposal:

- o  $\text{Points} = (\text{Lowest Cost Proposal price} \div \text{the Cost Proposal being evaluated}) \times \text{Cost Proposal points}$

For Solicitations seeking a specific make and model of a Commodity for which cost is the only evaluation criteria, only those Proposals that meet all of the mandated requirements and specifications may be considered.

**4.7. Determining the Best Value Bidder**

For Solicitations in which cost is not the only evaluation criteria, the Organization should award the contract to the highest technically rated Bidder whose Bid is determined to be responsive and in the best interests of the Organization, subject to a determination that the Cost Proposal is fair, reasonable and provides the best value to the Organization given the requirements of the project.

**4.8. Organization-Recommended Award and Notification**

The Organization's selection of the Bidder must be in accordance with evaluation criteria developed prior to the initial receipt of Bids. The Organization may reject all Bids or separate parts of the scope of services.

The Organization may award a contract to a Bidder if only one Bid was submitted, only if the President, or his/her designee, determines, based upon review of the Procurement record, that the Solicitation did not restrict competition and the cost is reasonable.

**4.9. Notification of Award**

Upon receipt of all approvals required in Section 5.1, the Designated Contact may notify all non-selected Bidders of the proposed selected Bidder.

**4.10. Post-Award Advertisement**

For any Procurement Contract with a value exceeding \$50,000, initially or through amendment, that was not awarded pursuant to a Competitive Procurement Method, the Organization shall publish in the New York State Contract Reporter a notice of the award of such contract and the reasons for any exemption from the Competitive Procurement Method.

## **5.5.APPROVALS**

### **5.1. Contract Award Approvals**

The department initiating the Procurement shall request approval of the award of a Procurement Contract or amendment of a Procurement Contract, by submitting to the Chief Contracting Officer: i) a completed Bidder approval checklist as well as all accompanying materials as set forth in such checklist; ii) a written memorandum detailing the Competitive Procurement Method, or justifying an exemption, and describing the evaluation process and the basis for determining the selected Bidder (i.e., lowest cost, best value); and iii) written approval of the initiating Department Head.

The award of Procurement Contracts, including amendments, shall be approved by the Chief Contracting Officer, Director of Diversity and the General Counsel's office as follows:

- The Chief Contracting Officer shall verify that the Bidder is responsible (and, in the case of a Centralized Contract from OGS, that the Bidder's OGS certification is valid), has submitted certificates of insurance in accordance with the Solicitation requirements, and, as applicable, that the selection was made pursuant to these Guidelines and the terms of the Solicitation.
- The Director of Diversity shall verify that M/WBE requirements have been met, including the Bidder's Workforce Participation and M/WBE plan.
- The General Counsel's Office shall review and approve documentation supporting the Procurement, including the supporting memorandum.

In addition to the approvals required above, any award of a Procurement Contract with a value:

- Less than \$100,000, must be approved by the Chief Financial Officer, except if the Chief Financial Officer is the initiating Department Head of the Procurement, then the Vice President of Administration;
- Of \$100,000 or above, must also be approved by the President; and
- Exceeding \$250,000 must also be approved by the Board.

Award of any Procurement Contract requiring performance of services for a term exceeding one year must be approved by the Board, regardless of the Procurement Contract's estimated or actual value.

### **5.2. Amendment Approvals**

In addition to all applicable requirements set forth in Section 5.1, each request for an amendment to a Procurement Contract shall require the following approvals:

- Any amendment that would cause the aggregate amount of a Procurement Contract to exceed \$250,000 must be approved by the Board.
- Any amendment that would increase the value of a Procurement Contract that already has an aggregate value of more than \$250,000 must be approved by the President.
- Any amendment that would increase the aggregate amount of a Procurement Contract by more than \$250,000 above the amount previously approved by the Board must be approved by the Board.

### **5.3. Contracts Requiring OSC Approval**

Any Procurement Contract exceeding \$1,000,000, originally or as amended, which was awarded non-competitively or will be paid in whole or in part from monies appropriated by the State, and any amendment to a Procurement Contract previously approved by the OSC where the value of the amendment is ten percent (10%) or more of the Procurement Contract value as originally approved by the OSC, shall be submitted to OSC for filing within 60 days after execution and if the contract/amendment is the subject of an active written notice by OSC, such amendment shall be submitted to OSC for *prior* approval.

### **5.4. Designation of Approval Authority**

Any officer or Department Head who seeks to designate another employee to exercise approval authority as provided for under these Guidelines must first have such designation approved by the Vice President of Administration, General Counsel and Chief Financial Officer.

### **5.5. Additional Requirements**

#### **5.5.1. Independent Auditors**

Independent auditors for the Organization shall be retained only with the prior approval of the Board of the Organization.

#### **5.5.2 Work Prior to Contract Execution**

Upon consultation with the President, the General Counsel is authorized to approve and execute legal Procurement Contracts and amendments after the work contemplated in the proposed contract or amendment begins.

Generally, a Procurement Contract should be fully executed and delivered by both parties prior to commencement of work. However, where the Department Head initiating the Procurement provides a written memorandum explaining an Emergency situation and justifying the need, a letter of intent (“LOI”) may be issued to a Contractor in Emergency circumstances upon approval by each of the following: the President, the Chief Financial Officer, and the General Counsel. Such LOIs may be issued prior to the execution of Procurement Contracts for a value of up to 10% of the total anticipated Procurement Contract amount, subject to approval limitations. Such LOIs shall authorize Contractors to proceed with work pending the execution of the Procurement Contract, and shall expressly provide that the Contractor is granted no rights against the Organization in the event a Contract is not executed except for the reasonable value of the preliminary work to be performed, not to exceed an amount set forth in the LOI.

#### **5.5.3 Extension of Contract Beyond Three Years**

No contract may be extended beyond three (3) years from the initial contract date without an explanatory memorandum from the relevant Department Head and approval by the President.

#### **5.5.4 Field Emergency Work**

Procurement contracts and amendments entered into in response to a “Field Emergency” are exempt from the requirement that they be fully executed and delivered by both parties prior to the commencement of work, and, in the case of contracts exceeding \$250,000, that they receive prior Board approval. Each Department Head shall prepare and provide a report of all Field Emergency work to the President and Chief Contracting Officer on a periodic basis, but no less often

than monthly. The President shall provide a report of such contracts and amendments to the Board and shall submit all such contracts and amendments exceeding \$250,000 to the Board for their approval at the Board meeting next following the authorization of the work necessitated by the Field Emergency. Except as specifically provided in this paragraph, all contracts and amendments, including those involving Field Emergencies, shall be subject to these Guidelines.

**5.5.5 Other Contract Approvals**

Upon completion of all other approvals required by these Guidelines, and before execution by the Organization, each Procurement Contract with a value:

- i) less than \$100,000 shall be approved by the Chief Financial Officer, General Counsel, Director of Diversity, and the initiating Department Head; and
- ii) of \$100,000 or above shall also be approved by the President.