



**Battery Park  
City Authority**

Battery  
Park  
City  
Parks



# Procurement Guidelines January 24, 2018

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## 1. DEFINITIONS

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

- “Amendment” shall mean both amendments and change orders.
- “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 Commodity or service at a stated price for the stated contract term.
- “Bid Log” shall mean a log maintained by the Chief Contracting Officer (“CCO”) documenting when bids are received, secured and distributed.
- “Bid Opening” shall mean the opening of sealed Bids, 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 Directors and/or Battery Park City Parks Conservancy’s (“BPCPC”) Board of Directors.
- “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 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 Authority.
- “Cost Proposal” shall mean the part of any Bid that sets forth the price for which the Bidder is offering to provide the Authority with the Services/Commodities described in a Solicitation.
- “Critically Time Sensitive” shall mean a situation where the protection of health or public safety, the orderly functioning of the Authority’s operations, or the conservation of public resources requires a rapid procurement.
- “Department Head” shall mean the President, General Counsel, Chief Financial Officer, Chief Administrative Officer, Vice President of Real Property, Vice President of Human Resources, and Director of Parks Operations, and such other individuals as designated by the President.

- “Designated Contact” shall mean the person or persons designated to receive Bids, and, if necessary, to communicate 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, SDVs, or M/WBEs, or for recycled or remanufactured Commodities or technology, in an amount not exceeding \$200,000. For purposes of determining whether a purchase may qualify as discretionary, all purchases within a fiscal year from a given vendor shall be aggregated.
- “Emergency” shall mean an urgent condition that, as determined by a Department Head, and as approved, prior to commencement of any work related to the Emergency, by the President, threatens to significantly disrupt the Authority’s operations, disrupt or delay a project, or create or perpetuate an unsafe condition or environment.
- “Final Award” shall mean a communication to a Vendor from the Authority that he or she has been selected by the Authority to provide a Good or Service.
- “Form, Function and Utility” shall mean the minimum essential requirements that will meet the Authority’s needs. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.
- “Guidelines” shall mean the Authority’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 the responsible Bidder(s) submitting the lowest price.
- “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.
- “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 Authority and that are substantially manufactured, produced or assembled in New York State, or Services that are sought by the Authority 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.
- “Original Termination Date” means the date a Procurement Contract, at the time of its execution, will expire and is exclusive of any subsequent Amendment(s).
- “Original Value” means the value of a Procurement Contract at the time of its execution, exclusive of any subsequent Amendment(s).
- “President” means the President of the BPCA and his or her designee(s).
- “Procurement Contract” shall mean any written agreement to which the Authority is a party for the acquisition of Commodities or Services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more.
- “Procurement” shall mean the purchase or acquisition of Commodities or Services, that, actually or by estimation, total \$5,000 or more. Any purchase under \$5,000 shall constitute a Procurement, however, where the Authority has purchased or intends to purchase substantially similar Commodities or Services from the same Vendor within the same fiscal year and the aggregate value of such purchases exceeds \$5,000. Procurements shall not include: annual operating expenditures such as payments required by law; Revenue Contracts; compliance obligations; payments to utility and insurance providers; payments required by existing Contracts, agreements, and leases (e.g. payment to City or State, rent, insurance premiums, credit rating agencies, etc.); 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 Authority participates; direct purchase advertising through radio, television or print media; tuition, conferences, seminars and other comparable activities; or transportation or other travel related expenses.
- “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 Authority in response to an RFP.
- “Purchase order” shall mean a document evidencing the procurement of a Commodity where a contract is not required but such procurement is subject to these Guidelines.
- “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.

- “Revenue Contract” shall mean a binding agreement between a governmental entity and another party that defines the terms under which revenue will be received by the governmental entity.
- “Service-disabled Veteran” or “SDV” shall mean (i) in the case of the United States army, navy, air force, marines, coast guard, army national guard or air national guard and/or reserves thereof, a veteran who received a compensation rating of ten percent or greater from the United States department of veterans affairs or from the United States department of defense because of a service-connected disability incurred in the line of duty; and (ii) in the case of the New York guard or the New York naval militia and/or reserves thereof, a veteran who certifies, pursuant to the rules and regulations promulgated by the director, to having incurred an injury equivalent to a compensation rating of ten percent or greater from the United States department of veterans affairs or from the United States department of defense because of a service-connected disability incurred in the line of duty.
- “Services” shall mean duty or labor to be rendered by a person or entity.
- “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 Authority 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 Authority, for vendors to submit Bids to provide the Commodities 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 Authority.

The Authority 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 advance and in writing by the President.

### **2.2. Application**

These Guidelines apply to all Procurements.

### **2.3. Administration of the Guidelines**

The most senior administrative officer, in consultation with the General Counsel, is responsible for ensuring that these Guidelines are followed by the Authority. The Authority must prepare and the Board must approve the Guidelines annually. Any interim modifications to the Guidelines must be approved by the most senior administrative officer, the General Counsel and the President. The CCO is 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 but not limited to insurance and M/WBE and SDV compliance, shall be tracked in a database by the CCO, or his or her designee.

### **2.4. Procurement Sources**

When undertaking a Procurement, the Authority must consider, as appropriate, each of the potential sources below:

- Preferred source offerings, as set forth in Section 2.4.1 of these Guidelines;
- Centralized Contracts from OGS or GSA for Services, technology and commodities;
- Minority and Women-Owned Business Enterprises;
- SDV-Owned Business Enterprises;
- New York State Business Enterprises; and
- Piggybacking (agency established contracts) where beneficial to the Authority, as set forth in Section 2.4.5.

#### **2.4.1. Preferred Source Offerings**

The Authority 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 Authority'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 Authority'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 a preferred source that is not the lowest Bidder should be documented.

**2.4.2. Centralized Contracts from OGS or GSA for Services, technology and commodities**

Even if using a Centralized Contract, the reason for selecting a specific Vendor that is not the lowest priced Vendor should be documented.

**2.4.3. Minority and Women-Owned Business Enterprises and SDV-Owned Business Enterprises**

To promote and assist participation by M/WBEs and SDVs certified by the Empire State Development Corporation, the Authority shall follow the relevant provisions of the New York State Executive Law. The Authority shall identify those areas or types of contracts for which such vendors may best provide Bids so as to maximize participation by such enterprises and facilitate a fair share of awarded contracts to such enterprises.

The Authority shall:

- 1) Conduct Procurements in a manner that will enable it to achieve the maximum feasible portion of the M/WBE and SDV goals established for Procurement Contracts.
- 2) Affirmatively promote and assist M/WBE and SDV participation in Procurement Contracts.
- 3) Set and evaluate goals for M/WBE and SDV participation, including joint ventures, in each Solicitation.
- 4) Consider the severability of bundled contracts; and
- 5) As practicable, provide a current list of certified M/WBEs and SDVs to prospective Contractors. The Authority shall consult federal requirements regarding such opportunities and consult the most recent disparity study available.

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

- Providing notice of opportunities to such enterprises and organizations that serve such enterprises;
- Maintaining lists of such enterprises that are properly certified and updating such lists regularly;

- Consulting lists of such enterprises maintained by the State's Department of Economic Development, among others;
- Establishing goals for such enterprises' participation and utilization as subcontractors and suppliers under Procurement Contracts; and
- Monitoring such enterprises' participation and utilization in Procurement Contracts.

**2.4.4. New York State Business Enterprises**

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

- a) When applicable, the Authority shall, in consultation with OGS, consider the specifications of New York State Business Enterprises in developing Solicitations for the purchase of Commodities 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 Authority 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 Authority 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 Authority, 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 to 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 Authority 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 Authority 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 and SDVs, where possible, in the Procurement of Commodities and Services;

f) The Authority shall notify the Commissioner of Economic Development of the award of a Procurement Contract for the purchase of Commodities 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.

#### **2.4.5. Piggybacking**

The Authority may use a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states pursuant to New York State Finance Law Section 163(10)(e). This type of procurement option is called "piggybacking". The Authority must evaluate multiple factors in order to determine the appropriateness of piggybacking, including: (1) determination of the need for the product or services; (2) consideration of the procurement method by which the original contract was awarded; (3) an analysis of alternative procurement sources including why a competitive procurement or use of a centralized contract is not in the Authority's best interest; and (4) reasonableness of the cost. The Authority's evaluation of these factors and rationale for using piggybacking should be set forth in the procurement record. The consent of the originating agency must be obtained where the Authority proposes to piggyback by using an amendment to an existing contract of that originating agency. Alternatively, the Authority may execute an independent contract based upon the equivalency of product or services being procured and pricing contained in the original contract.

### **3. GENERAL REQUIREMENTS**

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

The Authority 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 Commodities or Services, within forty-five business days after the date Bids were originally due. In addition, as a best practice, the Authority should also advertise its Procurement opportunities in other sources such as trade publications, journals, and newspapers when possible and appropriate, as well as Authority 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 Authority'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 Authority'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 Authority 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;
- Request that Bidders submit best and final offers subsequent to the Bid Opening;
- 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 Authority;
- Conduct contract negotiations with the next responsible Bidder if the Authority 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 Authority 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 Authority 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 CCO, or other designated official, of such contact.

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

The Authority must make a determination that a Bidder is responsible prior to awarding that Bidder a contract. The CCO, 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 CCO shall provide the Bidder with the opportunity to explain its position in writing, or, upon the most senior administrative 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 an individual designated by the President to ensure that: (i) the scope of work or Services to be provided are being/have been timely performed; (ii) cost escalations are identified at the earliest possible opportunity; and (iii) 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.

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

These Guidelines are intended for the guidance of officers and employees of the Authority 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.

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

The Authority may, in accordance with these Guidelines, pre-qualify multiple Vendors to provide Professional Services to the Authority.

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

The Authority 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 Authority's policies regarding conflicts of interest and the applicable provisions of law, including the Public Officers Law.

## **4. SELECTION PROCESS**

### **4.1. Introduction**

A Solicitation issued by the Authority shall describe the Services or Commodities the Authority 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 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. Procurement Methods**

#### **4.2.1. Discretionary Procurements**

Discretionary Procurements do not require a Competitive Procurement Method. Before making a Discretionary Procurement, however, the staff member initiating the Procurement must:

- Ensure that the Commodities and/or Services to be acquired meet the Authority's Form, Function and Utility needs;
- Consult with the Director of Diversity to identify any potential M/WBE or SDV Vendors;
- Make a reasonable attempt to obtain a quote from at least three different Vendors capable of supplying the required Commodities and/or Services, including M/WBE and SDV Vendors to the extent possible;
- Document the attempt to obtain such quotes and the quotes received, and include such information in the memorandum required by Section 5.1, along with facts sufficient to support the selection of the chosen Vendor and the reasonableness of the price to be paid; and

- Verify with the CCO that the selected Vendor is responsible.

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 or Purchase Order expires according to its terms.

#### **4.2.2. Non-Discretionary Procurement Methods**

##### **4.2.2.1 Non-Discretionary Procurements that are Exempt from the Requirement that a Competitive Procurement Method be Used:**

The following types of Procurements are exempt from the requirement that a Competitive Procurement Method be used but must satisfy all other applicable requirements set forth in these Guidelines:

- Sole Source - the Authority must document in writing the findings demonstrating that the proposed Vendor is a Sole Source.
- Single Source - the Authority must document in writing the findings demonstrating that the proposed Vendor is a Single Source. The term of a Single Source procurement contract shall be limited to the minimum period of time necessary to ameliorate the circumstances that created the material and substantial reasons for the single source award.
- Critically Time Sensitive - the Department Head initiating the Procurement must document in writing that a Critically Time Sensitive situation exists and shall make a reasonable attempt to obtain quotes from at least three Vendors. Where the Department Head initiating the Procurement provides a written memorandum explaining a Critically Time Sensitive situation and justifying the need that is approved by each of the following: the President, the most senior administrative officer, and the General Counsel, a letter of intent ("LOI") may be issued to a Contractor. 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 Authority 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.
- Emergency - the Department Head initiating the Procurement must document in writing that an Emergency exists and shall make a reasonable attempt to obtain quotes from at least three Vendors. Procurement contracts and Amendments entered into in response to an Emergency are exempt from the requirement that they be fully executed and delivered by both parties prior to the commencement of work. However, all procurement contracts and Amendments entered into in response to an Emergency must be approved in advance by the President, the most senior administrative officer, and the General Counsel. Each Department Head shall submit all such contracts and Amendments exceeding \$500,000 to the Board for their approval at the Board meeting next following the authorization of the work necessitated by the Emergency. In the event the work necessitated by the Emergency is completed within one week of the date the Emergency is documented and has a value of \$25,000.00 or less, the President may approve payment for the Vendor upon presentation of an invoice and documentation from the Department

Head that the work has been so completed. Except as specifically provided in this paragraph, all contracts and Amendments involving Emergencies shall be subject to these Guidelines.

- Professional Services where the quality, style or skill of such Services may be individuated or particular to a person or Vendor.

#### **4.2.2.2 Competitive Procurements**

As set forth more fully within these Guidelines, such procurements are: (i) Solicitations, including RFP, requests for information, IFBs, 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.

### **4.3. 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 Authority'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 CCO shall maintain templates, incorporating all relevant requirements set forth in these Guidelines, to be used by the Authority 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.

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

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

#### **4.4.1. Advertisement of the Solicitation**

The requirement to advertise Solicitations in the New York State Contract Reporter is discussed in Chapter 3.

#### **4.4.2. Distribution of the Solicitation**

Once the Solicitation is finalized, the Authority 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 Authority's website but may also be distributed via postal mail, e-mail or other means.

#### **4.4.3. 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 CCO must certify that Bids were received in accordance with the terms of the Solicitation.

#### **4.4.4. Other Requirements:**

- All Bids shall be received at one designated location at the Authority's offices and, immediately upon receipt, the envelope shall be stamped with the time and the date received.
- Sealed Bids shall be immediately locked in a secure location.
- 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.
- 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.
- 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.
- The Designated Contact, the project manager assigned to the project, and the CCO, or his/her designee, shall be present at each Bid Opening, at which time each Proposal shall be reviewed for compliance with the minimum mandatory qualifications set forth in the RFP and for inclusion of all required information and documentation.
- All Bids, including the time stamp and envelope, or shipping label from the shipping materials, shall be retained for 6 years.
- 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 4.6.4, will not be provided to the Evaluation Committee for review until after an initial scoring for the technical evaluation.

#### **4.5. 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 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 (including the Cost Proposal, when appropriate), the RFP, and any

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<sup>1</sup> For convenience, Sections 4.5 through 4.8 discuss the evaluation process of an RFP but are applicable to any solicitation for competitive Bids requiring an evaluation.

addenda to the RFP. The evaluation process, including any numerical scores, shall be documented in reasonable detail.

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

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

##### **4.6.1. Development of the Evaluation Criteria**

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

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

##### **4.6.2. Assignment of Values to Evaluation Criteria**

The methodology for evaluating Proposals must be established before the initial receipt of Proposals. Once the 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 CCO shall verify with the General Counsel before issuance of the RFP.

##### **4.6.3. The 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:

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

A subject matter expert who is not a member of the Authority'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.

##### **4.6.4. Scoring Methodology**

Scores for the pre-determined criteria must be recorded by the Evaluation Committee on the 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:

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

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

- disadvantages the Organization;
- uniquely benefits the selected Bidder;
- prejudices any non-winning Bidder nor
- could reasonably be expected to have caused additional potential Bidders to submit Bids if known at the time of bidding.

After performing an initial evaluation, the Evaluation Committee may determine certain Bidder(s) should be eliminated from consideration 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. Absent advance approval from the President or her designee, only Evaluation Committee members may be present at such interviews. Upon completion of the evaluation as set forth in the evaluation instrument and the RFP, the initial evaluation scores shall be adjusted and finalized, as necessary.

#### **4.7. Determining the Best Value Bidder**

For Solicitations in which cost is not the only evaluation criteria, the Authority should award the contract to the highest 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 Authority given the requirements of the project.

#### **4.8. Request for Best and Final Offer**

In circumstances where it would be beneficial to the Authority, the Authority is authorized to request from one or more Bidders an amendment to its Bid that would represent its best and final offer if: (1) the project manager or Department Head provides a written memorandum justifying the request for a best and final offer; (2) such request is approved by the President, and (3) such request does not materially change the scope of work or evaluation criteria for the Procurement.

#### **4.9. Award Based on Single Bid**

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

#### **4.10. Selection**

At the conclusion of the evaluation process, the project manager shall inform his or her Department Head of the proposed award. At the Department Head's request, the Evaluation Committee shall consider such additional facts and/or information as the Department Head deems necessary prior to the Authority's approval of the proposed award and notification of any Bidder of a Final Award.

#### **4.11. Notification of Award**

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

#### **4.12. 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 Authority 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. APPROVALS**

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

- 5.1.1.** The department initiating the Procurement shall request approval of the award of a Procurement Contract by submitting to the CCO: 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.
- 5.1.2.** The award of Procurement Contracts, and any subsequent Amendments, shall be approved by the CCO, Director of Diversity and the General Counsel's office as follows:
  - The CCO 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.
- 5.1.3.** In addition to the approvals required above, any award of a Procurement Contract with a value:
  - Less than \$150,000, must be approved by the Chief Financial Officer, except if the Chief Financial Officer is the initiating Department Head of the Procurement, then the most senior administrative officer;
  - Of \$150,000 or above, must also be approved by the President; and
  - Of \$500,000 or above, must also be approved by the Board.

## **5.2. Contract 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:

- 5.2.1.** The Board must approve any Amendment that:
  - Causes the aggregate amount of any Procurement Contract to exceed \$500,000; or that
  - Increases the aggregate amount of a Procurement Contract by \$500,000 or more above the amount the Board previously approved.
- 5.2.2.** The President must approve any Amendment that would cause the value of a Procurement Contract, either originally or as amended, to exceed its Original (or amended) Value by twenty percent (20%) or more.

## **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 most senior administrative officer, General Counsel, and Chief Financial Officer.

## **5.5. Additional Approvals and Reports**

### **5.5.1. Independent Auditors**

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

### **5.5.2. Contract Approval Subsequent to Commencement of Work**

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

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

- Contracts with a term, either originally or as amended, of less than three years, may not be extended beyond three (3) years without Board approval of such extension
- Contracts with a term, either originally or as amended, of three years or more may not be extended beyond three (3) years from their Original Termination Date without Board approval of such extension, and such Board approval must be sought for each additional three year period.

### **5.5.4. Contracts with a Value between \$250,000 and \$500,000**

Any Procurement Contract the Authority enters into with an Original Value between \$250,000 and \$500,000 must be documented by the CCO and reported to the Board at the first meeting subsequent to such contracts' execution. In addition, on a quarterly

basis, management must provide a report to the Board listing all projects for which a Procurement may potentially be performed in that quarter.

**5.5.5. Contracts Requiring Performance of Personal Services for a Term Exceeding One Year**

Such contracts must be approved by the Board, regardless of their estimated or actual value. Note that warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases) are not considered personal service contracts and do not require approval by the Board unless the amount of the contract is over \$500,000 in aggregate through its term.

**5.6. Final Contract Approvals**

Upon completion of all other approvals required by these Guidelines, subsequent to execution by the selected Vendor and before execution by the Authority, each Procurement Contract with a value:

- i) less than \$150,000 shall be approved by the Chief Financial Officer, General Counsel, Director of Diversity, and the initiating Department Head; and
- ii) of \$150,000 or above shall also be approved by the President.