

Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Personal Procurement Contracts

As required by Section 2879 of the Public Authorities Law of the State of New York, the following guidelines (the "Guidelines") are applicable with respect to the use, awarding, monitoring and reporting of Procurement Contracts of the Roosevelt Island Operating Corporation (referred to herein as the "Corporation"). These Guidelines, as approved by the Board of Directors of the Corporation, shall supersede any previous guidelines, statements or other policies in connection with procurement contracts, and shall be annually reviewed and approved by the Board of Directors of the Corporation.

A. PROCUREMENT CONTRACTS

1. Definition. A procurement contract is defined in Section 2879(2) of the Public Authorities Law as any written agreement for the acquisition of goods and services of any kind, in the actual or estimated amount of five thousand dollars or more, or such other amount as may be set forth in amendments to Section 2879(2) (hereinafter referred to as "Procurement Contracts").

2. Competitive Basis. Procurement Contracts are to be awarded to persons/firms on a competitive basis to the maximum extent possible. Such awards are to be made upon receipt and evaluation of proposals obtained from persons/firms responding to a Corporation request for proposals or invitations for bids forwarded, where practicable, to at least three qualified persons/firms. Where appropriate, persons/firms may be pre-qualified before proposals are solicited. The firms shall be ranked according to criteria appropriate for each project, including, where applicable, special or technical expertise, current workload capacity, past performance for the Corporation on other projects, responsibility and proposed fees, price, charges or billing rates. In addition, the Corporation may determine not to select a person/firm where information is obtained which indicates that the person/firm is not qualified, responsive or responsible based upon appropriate criteria for the project.

3. New York State Contract Reporter. In addition, as required by, and in accordance with, Article four-c of the Economic Development Law, prior to awarding any Procurement Contract in the actual or estimated amount of fifteen thousand dollars or more, or such other amount as may be set forth in amendments to Article four-c of the Economic Development Law, the Corporation

shall submit sufficient information to enable publication of the notices of procurement contract opportunities in the New York State Contract Reporter.

4. Services. Procurement Contracts for services are written agreements to provide a service including, but not limited to, the performance of legal, accounting, management consulting, investment, banking, planning, training, statistical, research, public relations, architectural, engineering, surveying, or other personal services of a consulting, professional or technical nature for a fee, commission or other such compensation by a person or persons who are not providing such services as officers or employees of the Corporation.

5. Goods. Procurement Contracts for goods are written agreements for the provision of goods including, but not limited to, purchases of office supplies, furniture, and equipment.

6. N.Y.S. O.G.S. Notwithstanding the above, the Corporation is authorized to purchase goods and services through programs offered by the New York State Office of General Services (%OGS+) and as may be permitted under Article XI of the State Finance Law.

B. REASON(S) FOR USE OF PERSONAL SERVICES

When and as approved, Procurement Contracts for personal services may be entered into because of one or more of the following factors or considerations:

- (i) requirement of special expertise or unusual qualifications;
- (ii) nature, magnitude or complexity of services required;
- (iii) lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- (iv) lower Cost;
- (v) short term need for services; or
- (vi) infrequent need for services.

C. SELECTION CRITERIA

1. Methods.

(a) *Competitive Bids.* Solicitation of price bids for specified goods or services are to be awarded to persons/firms on a competitive basis to the maximum extent possible. Competitive bids are to be solicited when the goods or services required are of a standardized nature that may reasonably be made the

subject of specifications to which bidders respond with required qualification data and price offers; or

(b) *Requests for Proposals.* Solicitation of specific proposals responsive to solicitation to indicate an understanding of the financial, organizational and logistical requirements and technical problems identified in the solicitation, which also detail elements of performance including techniques and procedures, together with prices. Award of a contract within this method is made on the basis of a formal evaluation of the characteristics, quality and cost of such proposals; or

(c) *Competitive Negotiations.* Solicitation of qualifying potential procurement contractors pursuant to a request-for-proposal method to further negotiate their proposals, including prices for contract awards on the basis of a formal evaluation of the characteristics, quality and cost of such proposals.

2. Minority and Women-Owned Businesses. To promote and assist participation by minority and women-owned businesses, the applicable provisions of Article 15A of the New York State Executive Law shall apply in the selection and awarding of Procurement Contracts. The Corporation shall identify those areas or types of contracts for which minority or women-owned business enterprises may best provide proposals so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.

(a). For the purpose of this section, a minority owned business enterprise means any business enterprise, including a sole proprietorship or corporation that is:

- (i) at least fifty-one percent owned by one or more minority group members or in the case of a publicly owned business at least fifty-one percent of the common stock or other voting interests of which is owned by one or more minority group members;
- (ii) an enterprise in which the minority ownership is real, substantial and continuing;
- (iii) an enterprise in which the minority ownership has and exercises the authority to control independently 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.

(b) For the purposes of this section, a minority group member means 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 in any of the Black African racial groups 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 Island; or
- (iv) Native American persons having origins in any of the original peoples of North America.

(c) For the purposes of this section, women-owned business enterprise means a business enterprise, including a sole proprietorship, partnership or corporation which is:

- (i) at least fifty-one percent owned by one or more united States citizens or permanent resident aliens who are women or in the case of publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned by United States citizens or permanent resident aliens who are women;
- (ii) an enterprise in which the ownership interest of women is real, substantial and continuing;
- (iii) an enterprise in which the women ownership has and exercises the authority to control independently 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.

3. New York Businesses. It is the policy of the Corporation to promote the participation by New York state business enterprises and New York state residents in Procurement Contracts, with the cooperation of the department of economic development and the job service division of the department of labor including, but not limited to providing through cooperative efforts with contractors for the notification of New York state business enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts in an amount estimated to be equal to or greater than one million. dollars; by cooperating with New York state in efforts to obtain offset credits from foreign countries and promulgating procedures which will assure compliance by contractors with such notification as a condition of awarding bids. Such 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; attest to compliance with the federal equal employment opportunity act of 1972 (P.L. 92-261), as amended, document their efforts to provide notification to New York state residents of employment opportunities

through listing any such positions with the job service, division, or providing for such notification in, such manner as is consistent with existing collective bargaining contracts or agreements.

(a) For the purposes of this section:

- (i) New York state business enterprise means a business corporation, which offers for sale or lease or other form of exchange, goods that are sought by the Corporation and that are substantially manufactured, produced or assembled in New York state, or services which are sought by the Corporation and that are substantially performed in New York state.
- (ii) Foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by the corporation and which are substantially produced outside New York state, or services sought by the Corporation and which are substantially performed outside New York state.

4. Architecture, Engineering or Surveying

(a) For the purposes of this section the following terms are defined in Section 2879(3)(iv) of the Public Authorities Law:

- (i) A ~~%~~professional firm+ is any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture, engineering or surveying.
- (ii) ~~%~~Allowable indirect costs+ of a Professional Firm are those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits.

(b) The Public Authorities Law provides that the Corporation shall not refuse to negotiate with a ~~%~~Professional Firm+ solely because the ratio of the ~~%~~allowable indirect costs+ to direct labor costs of the Professional Firm or the hourly labor rate in any labor category of the Professional Firm exceeds a limitation generally set by the Corporation in the determination of the

reasonableness of the estimated cost of services to be rendered by the Professional Firm, but rather the Corporation will also consider the reasonableness of cost based on the total estimated cost of the service of the Professional Firm which will include, among other things, all the direct labor costs of the Professional Firm for such services plus all allowable indirect costs, other direct costs, and negotiated profit of the Professional Firm.

D. WAIVER OF SELECTION CRITERIA

Procurement Contracts may be awarded to persons/firms on a non-competitive basis when such contracts are exempt under Section 144 of the Economic Development Law and/or when circumstances such as the following exist:

- (i) in the event an emergency, critical or other extraordinary circumstance exists which make competition impracticable or inappropriate;
- (ii) only one source for the services is available;
- (iii) when legal services or other specialized services are required for which a certain person\firm's expertise is unique;
- (iv) continuation of existing services is desirable to provide continuity to the orderly development of a Corporation project;
- (v) where a person\firm has superior qualifications to perform the service at a cost that is determined to be fair and reasonable; or
- (vi) where information is obtained which indicates that persons\firms which were invited to submit proposals are not qualified, responsive or responsible based upon the appropriate criteria for the project.

E. APPROVAL PROCESS

The award of Procurement Contracts and/or the waiver of the selection criteria shall be approved as follows:

- (i) Procurement Contracts and waivers in amounts under \$50,000 shall be approved by the President/Chief Executive Officer;
- (ii) Procurement Contracts and waivers in amounts of \$50,000 or over shall be approved by the President/Chief Executive Officer and the Board of Directors of the Corporation; and

(iii) Procurement Contracts for services to be rendered over a period in excess of one year shall be approved by the President/Chief Executive Officer and the Board of Directors of the Corporation and such contracts shall be annually approved by the Board of Directors of the Corporation thereafter.

Where the Comptroller of the State of New York (~~NYS Comptroller~~) determines pursuant to § 2879-a of the Public Authorities Law and his or her authority to supervise the accounts of public corporations, that contracts or categories of contracts in excess of one million dollars (a) to be awarded by the Corporation to a single source, a sole source or pursuant to any other method of procurement that is not competitive, or (b) which are to be paid in whole or in part from monies appropriated to the Corporation by the State of New York for such contractual expenditure, require supervision in the form of prior review and approval of such contracts, and the NYS Comptroller so notifies the Corporation of such determination, then any such contract entered into subsequent to such notification shall be submitted to the NYS Comptroller for his or her approval and shall not be a valid enforceable contract unless it shall first has been approved by the NYS Comptroller. Where the NYS Comptroller has so notified the Corporation that any contract or category of contracts shall be subject to his or her approval, the Corporation shall include or cause to be included in each such contract a provision informing the other party that such contract is subject to the NYS Comptroller's approval pursuant to the NYS Comptroller's authority to supervise the accounts of public corporations. If the NYS Comptroller has not approved or disapproved any contract subject to his or her approval within ninety (90) days of submission to his or her office, such contract shall become valid and enforceable without such approval.

F. RESPONSIBILITIES OF PROCUREMENT CONTRACTORS

Contractors shall have the following responsibilities:

1. To perform the contract in accordance with its terms.
2. To perform the services required under the contract completely, efficiently, in a timely manner, at a reasonable cost and in a manner which is satisfactory to the Corporation.
3. To cooperate with Corporation personnel who are directing, supervising or monitoring the performance of the services or who are assisting in their performance.

G. PROCUREMENT CONTRACTS INVOLVING FORMER OFFICERS OF THE CORPORATION

The Corporation shall not enter into Procurement Contracts with its former officers or employees, or with firms employing such officers or employees, except as specifically approved by resolution of the Board of Directors, provided however, that any such resolution shall be deemed not to impose a more stringent requirement than as may be permitted by the applicable provisions of Section 73 of the Public Officers Law.

H. IMPLEMENTATION OF GUIDELINES

1. The Chief Financial Officer of the Corporation shall be responsible for:

(a) Preparing for approval by the President/Chief Executive Officer (or designee thereof) such supplemental procedures as may be required to effectively implement the approved Guidelines; and

(b) Monitoring departmental compliance with the approved Guidelines.

2. The General Counsel shall be responsible for preparing proposed amendments to the Guidelines for approval by the President/Chief Executive Officer and the Board of Directors when and as required.

I. REPORTING

The Chief Financial Officer shall annually prepare for approval by the Board of Directors a report on Procurement Contracts, the selection process used and the status of all existing Procurement Contracts, as of the end of each fiscal year, for submission to:

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

The annual report shall include:

- (i) these Guidelines, amendments thereto, and an explanation thereof;
- (ii) status of existing Procurement Contracts setting forth a description of the duties performed by the contractor; the date of the contract and its duration; the total amount of the contract; and the status of the contract including the amount spent on the contract during the reporting period and for the life of the contract to date; and
- (iii) list of Procurement Contracts:
 - (1) entered into with New York state business enterprises and the subject matter and value thereof;
 - (2) foreign business enterprises and the subject matter and value thereof;
 - (3) the selection process used to select such contractors; and
 - (4) all contracts which were exempt from publication requirements of article four-C of the Economic Development Law, and the basis for any such exemption.

J. EFFECT ON AWARDED CONTRACTS

Nothing contained in these Guidelines shall be deemed to alter, effect 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.

K. MISCELLANEOUS

1. Powers of Amendment. The Corporation shall have the power from time to time to amend these Guidelines in accordance with the provisions of Section 2879 of the Public Authorities law; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Procurement Contracts, the terms of which were established pursuant to these Guidelines or to previously existing Guidelines.

2. No Recourse under these Guidelines. No provision of these Guidelines shall be the basis for any claim based on these Guidelines against any Director, officer or employee of the Corporation or the Corporation itself.

3. Provisions Required by Law. These Guidelines are hereby deemed to include any provision required by law to be included herein.