



# CONTRACTS PROCUREMENT MANUAL

# NYCEDC PROCUREMENT MANUAL

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## **CHAPTER 1 – General Provisions**

- 1. Purpose**
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### **1. Purpose**

The purpose of this Manual is to simplify and clarify the guidelines by which NYCEDC is permitted to procure goods and services. The policies and procedures related to NYCEDC's procurements of goods and services is governed by Article 4 ("Contracts by the Corporation"), Section 4.01 ("Procurement") of NYCEDC's Master and Maritime Contracts (the "Master Contracts") with the City.

The section indicates that, unless otherwise authorized by law, NYCEDC shall award all contracts for goods or services using one of the seven enumerated procurement methods. Where federal or State law, rules or regulations applicable to funds prescribe procurement requirements that differ from those set out in the Master Contracts, the requirements of those laws, rules or regulations shall govern with respect to contracts funded with such funds.

### **2. Ethics**

NYCEDC employees responsible for the expenditure of taxpayer dollars have a responsibility to ensure that their conduct will not violate the public trust placed in them. They must make certain that their conduct does not raise suspicion or give the appearance that they are in violation of their public trust. To this end, NYCEDC employees having responsibility for contracting at all levels shall:

- encourage competition, prevent favoritism, and obtain the best value in the interest of the City and the taxpayers;
- place professional responsibilities above personal interests;
- ensure fair competitive access to NYCEDC procurement opportunities to a broad cross-section of responsible vendors;
- deal with the public and with vendors with courtesy, consideration, and even-handedness;
- use information gained confidentially in the performance of NYCEDC duties solely in the City and NYCEDC's interests; and
- report corruption and unethical practices, wherever and whenever discovered, to the appropriate official and/or take such other action as is warranted by the situation.

In addition, pursuant to subsection (c) of Article 8 (“Representations, Warranties and Covenants”), Section 8.02 (“Conflict of Interest”), all NYCEDC salaried officers and employees must agree to in writing to be subject to the restrictions set forth in Chapter 68 (“Conflict of Interest Board”) of the City Charter.

### **3. Contract Files and Record Keeping**

NYCEDC shall ensure that copies of its contracts and other standard information regarding its contracts and vendors are reasonably available for inspection as provided by law, with adequate protection for confidential information. NYCEDC shall maintain files that contain all documentation pertaining to the solicitation, award, and management of each of its contracts, purchase orders, amendments, renewals and change orders.

All contract files shall be retained by NYCEDC for a minimum of seven years beyond the expiration date of the contract before final disposition.

## CHAPTER 2 – Procurement Process

1. **Specifications**
2. **Bid Splitting**
3. **Price/Cost Analysis**
4. **Responsiveness**
5. **Vendor Responsibility**

### 1. **Specifications**

Specifications are used to obtain goods, services, and construction to fulfill NYCEDC's needs in a cost-effective manner, taking into account, to the extent practicable, the costs of ownership and operation, as well as costs of acquisition. Therefore, specifications shall:

- permit maximum practicable competition;
- describe clearly NYCEDC's requirements without favoritism toward a vendor or a vendor's good, services, or construction;
- to the extent practicable, be generic in nature and emphasize functional or performance criteria, while limiting design or other detailed physical descriptions to those necessary to meet NYCEDC's needs; and
- to the extent practicable, utilize accepted commercial standards, and limit unique requirements that would tend to favor a vendor or a vendor's good, service, or construction

Any vendor participating in the drafting of specifications shall not participate, in any manner, in a response to any subsequent solicitation utilizing such specifications, in whole or in part, a vendor or such vendor's good, services, or construction, unless it is NYCEDC's interest to allow such participation. In that case, NYCEDC's contract file must contain the basis thereof to permit the vendor to participation in the competition. Such prohibited participation shall include, but not be limited to, participating as a contractor or a subcontractor, or as a consultant to any contractor or subcontractor, responding to the solicitation using the specifications. These guidelines apply to any vendor that has drafted any portion of the specifications used in a procurement regardless of whether such vendor's services were procured specifically for the drafting of those specifications were procured as a general consulting service, or were donated.

### 2. **Bid Splitting**

A procurement shall not be artificially divided in order to meet the requirements of the micro or small purchase methods of procurement.

### **3. Price/Cost Analysis**

Prior to vendor selection, NYCEDC shall determine that the contract price is fair and reasonable by using price/cost analysis. The price/cost analysis must be maintained in the contract files.

Examples of price/cost analysis techniques that may be appropriate to use to determine whether a proposed price is fair and reasonable include, but are not limited to:

- comparing proposed prices received in response to a solicitation;
- comparing current proposed prices to prior proposed prices and contract prices;
- applying rough yardsticks, i.e. rough order of magnitude (e.g., dollars/lb., price/horsepower), to a proposed price to highlight inconsistencies that would warrant further review;
- comparing proposed prices with competitive price lists,
- published market prices of commodities; or
- comparing proposed prices with cost estimates prepared by NYCEDC employees, or outside vendors charged with cost estimating

### **4. Responsiveness**

A responsive bid or proposal is one that complies with all material terms and conditions of the solicitation and all material requirements of the specifications.

Factors affecting the responsiveness of bids or proposals may include:

- Compliance with all material requirements of the specification;
- Compliance with all material terms and conditions of the solicitation;
- Submission of bids or proposals in the form specified in the solicitation including all required signatures, in ink, and including all required pricing information;
- If bid or proposal price has been materially altered, alterations must be initialed in ink by the bidder or proposer. If the alternation has not been initialed in ink, and can be severed from the other items in the bid or proposal, then that particular item only may be considered non-responsive;
- Submission of bids or proposals by the time and date and at the place specified in the solicitation except that a late proposal may be accepted so long as all late proposals are allowed;
- Submission of bid, performance or payments security, if required by the solicitation.
- Submission of samples, literature, or other information, if required by the solicitation;
- Submission of all required disclosure statements; and
- Attendance at a mandatory pre-bid or pre-proposal conference or site visit

Bids or proposals that fail to confirm with the standards set forth above may be rejected, at NYCEDC's sole discretion.

## **5. Vendor Responsibility**

NYCEDC purchases shall be made from, and contracts shall be awarded to, responsible vendors only. A responsible vendor is one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars or benefits. NYCEDC must deem a vendor responsible for each new contract.

NYCEDC utilizes several resources in making the Responsibility Determination ("RD") If applicable, NYCEDC references a vendor's filings with the Vendor Information Exchange System ("VENDEX"), which is administered by the Mayor's Office of Contract Services ("MOCS"). In certain instances, prior to making its determination of vendor responsibility, NYCEDC requests the Department of Investigation ("DOI") to review information pertinent to the vendor and submit back to the Corporation a Vendor Name Check ("VNC") response. In all situations, NYCEDC also performs a diligent review of the vendor using various resources, including LexisNexis, NYC Department of Finance and US Department of Labor. The RD is supported by the information discovered through all of these sources.

### **Vendor Background Forms Filing Types:**

- **MOCS VENDEX Forms:** The VENDEX statute requires vendors to submit information (applicable Vendor and Principal Questionnaires) once every three years. Vendors that are up for an award during the three year period must update or confirm that there is no change in the previously filed information by submitting either:
  - **Changed Questionnaire:** Required if there is a change in the vendor's filing information. The vendor must submit the Changed Questionnaire to MOCS and notify NYCEDC of the submission; or
  - **Certificates of No Change ("CNC"):** Required if there is no change in the vendor's filing information. Two completed CNC forms must be submitted to NYCEDC; or
  - **New VENDEX Questionnaires:** required if the vendor has never completed VENDEX questionnaires, or has not made a complete VENDEX submission in the last 2 ½ years. The vendor must complete new questionnaires and submit them directly to MOCS. NYCEDC must be notified of the submission.

Notwithstanding the above, NYCEDC reserves the right to at any time request new documents in order to conduct an RD of a vendor who is actively working on an NYCEDC contract.

The Contracts department offers VENDEX training, which discusses in further detail the policy and new procedure described above. The VENDEX training is available to all NYCEDC employees.

## **Chapter 3 – Procurement Methods**

- 1. Invitation for Bid**
- 2. Request for Proposal**
- 3. Sole Source**
- 4. Emergency Procurement**
- 5. Micro and Small Purchase**
- 6. Request For Qualification**
- 7. Contractors Recommended by Construction Manager**
- 8. Competitive Sealed Proposal**

### **1. Invitation for Bid**

This procurement process method is primarily used for awarding construction contracts. An Invitation for Bids (“IFB”) is prepared by NYCEDC, which includes a project scope of services and all applicable contractual terms and conditions. Public notice of the IFB is published in the City Record, State Contract Reporter (if federally funded) and various newspapers and trade publications 7 days prior to the release of the project. The solicitation period should last for a minimum of 21 calendar days before a public bid opening may be held. Once the bids are received, they are opened publicly at NYCEDC in the presence of one or more witnesses. The amount of the base bid and alternates (if any), the name of the bidder and the bid security are recorded. The tabulations are available for public inspection. The construction contract is awarded to the lowest responsible and responsive bidder once the project team has completed a bid analysis.

### **2. Request for Proposal**

This procurement method is primarily used for awarding a consultant contract to provide professional services. A Request for Proposals (“RFP”) is prepared by NYCEDC, which includes a project scope of services and all applicable contractual terms and conditions. Proposals may be solicited from respondents responding to a public notice of the RFP, those that are chosen from the NYCEDC Vendors List or those chosen pursuant to a publicly advertised Request for Qualifications (“RFQ”). The RFP will be in a solicitation for a period of time that is deemed sufficient by NYCEDC given the services requested and the complexity of the project. Proposals are then submitted to NYCEDC by the given response date and evaluated based on the selection criteria within the RFP. For projects that have federal funds allocated, price will not be evaluated. The highest ranked consultant(s) will require NYCEDC Selection Committee approval before a contract can be negotiated and awarded. NYCEDC may award to multiple consultants and execute retainer consultant contracts with consultants to award work through task orders when need for services arise. Task Orders may be distributed using the mini RFP process. All or selected Retainer Consultants may participate in the mini RFP process and one or more Retainer Consultants may be awarded the task order(s).

### 3. Sole Source

A contract may be awarded for a supply, service or construction item without competition when it satisfies certain general guidelines of the Deputy Mayor for Economic Development and Planning or his/her predecessor in function, is specifically approved by the Deputy Mayor; or with the Deputy Mayor's approval, the president of NYCEDC determines that there is only one source for the required supply, service or construction item.

The Deputy Mayor's general guidelines authorize sole source contracting (without the need for specific approval from the Deputy Mayor) in the following circumstances if the President and Selection Committee determine that such circumstances have been satisfied:

For Professional Services:

- A consultant has exclusive access to unique technical data and/or unique capabilities which are relevant to the progress and/or completion of a project.
- A consultant's prior and recent experience with a specialized project and/or the geographical location of the specific project and/or familiarity with local community groups would add significantly to the overall quality of either the planning, design or construction of the project.

For Supply Service or Construction Item:

- A unique construction item (new or a replacement) or service is made and/or supplied by only one vendor. In this case NYCEDC would have no other viable alternatives.
- Failure or insufficient response to the public bidding process which forces NYCEDC to seek a company which supplies an item to avoid possible cost overruns or a delay in the project.
- A small component needed for a project is a critical path item where competitive public bidding would unduly delay the overall project or cause possible cost overruns. A small component is defined as an amount that is one hundredth of the cost of the total private and public funds involved in the project
- Construction work funded under the Contract is an integral component of a project being developed by an entity other than NYCEDC, and considerations of timeliness and/or coordination and control dictate that such construction work should be awarded to such entity. In no event shall the amount to be procured by sole source exceed 20% of the project cost.

#### **4. Emergency Procurement**

NYCEDC may make an emergency procurement when (a) the President determines that there exists a threat to public health, welfare or safety or to the property in which the City or NYCEDC has an interest, (b) with the specific approval of the Deputy Mayor for Economic Development and Planning, or (c) the President determines, after review and approval by the Selection Committee, that one or more of the following situations or facts exist:

- Failure to immediately procure and expedite materials would threaten or jeopardize the security or value of property (or goods) associated with the project.
- To avoid or prevent possible cost overruns or a substantial delay in the project's completion. Also applicable when the scheduled delivery date of an item intrinsic to the construction's progress has been adversely altered.
- When NYCEDC must remedy any threat to public health, safety or welfare caused by or present during the course of a project.
- Emergency procurements shall be made with the competition as is practicable under the circumstances and a written determination of the basis for the emergency and/or the selection of the particular contractor shall be included in the contract file.

#### **5. Small and Micro Purchase**

A Small Purchase method is used procurements up to and including \$100,000. NYCEDC shall use reasonable efforts to obtain offers from at least three responsible suppliers, consultants or contractors to perform the required services. A Micro Purchase method is used for procurements of under \$5,000. NYCEDC shall obtain offers from one or more suppliers, consultants or contractors, as NYCEDC deems appropriate. NYCEDC shall maintain written records of all suppliers, consultants or contractors that are solicited, their responses and the vendor that is ultimately selected. Once NYCEDC has approved the procurement process, contracting may begin.

#### **6. Request for Qualification**

This procurement method is primarily used to solicit the desired minimum qualifications from a consultants or contractors that NYCEDC has deemed necessary requirements for an upcoming consulting or construction project. Public notice of the Request for Qualifications ("RFQ") is given by publication in the City Record, State Contract Reporter (if federally funded) and various newspapers and trade publications. The RFQ will be in a solicitation for a period

of time that is deemed sufficient by NYCEDC given the qualifications being requested in terms of the project. Qualifications are then submitted to NYCEDC by the given response date and evaluated based on the criteria within the RFQ. The highest ranked consultant(s) or contractor(s) will be short-listed but will not be awarded a contract. The short-listed respondents will be compiled and considered for any future RFP or IFB. The short-listed respondents will require NYCEDC Selection Committee approval before any RFP or IFB can be issued.

## **7. Contractors Recommended by Construction Manager**

For construction projects in which NYCEDC has retained a Construction Manager (“CM”), NYCEDC may select contractors with the help of that CM. The CM will be selected through NYCEDC’s standard public RFP process. The CM will recommend to NYCEDC a minimum of five contractors (for projects exceeding \$100,000) and three contractors (for projects less than a \$100,000) for NYCEDC’s approval. Once the contractors are approved by NYCEDC, the CM will solicit proposals from the approved contractors. The proposals will be reviewed by NYCEDC and the CM before a contractor is selected to complete the project. Through this procurement method, the CM will be responsible for helping to solicit the proposals, evaluate them and negotiate with the contractor to obtain the most responsible and complete proposals.

The contract will be awarded to the responsible contractor whose proposal is the most advantageous to EDC and the City. The Deputy Mayor for Economic Development and Planning has approved the use of the CM method of procurement in retaining construction contractors for work related to properties which NYCEDC manages or is responsible for and has approved the use of analogous method of procurement to select personal and professional consultants (including service contractors) for services related to such properties.

## **8. Competitive Sealed Proposal**

This procurement method is used when the work is highly specialized and it is in NYCEDC’s best interest to enter into discussions with the prospective contractors prior to the contract award to ensure their full understanding of the contract requirements and their ability to complete the work. NYCEDC may enter into a contract for construction as described in the Competitive Sealed Proposal method outlined in the contract if the President and Selection Committee determine that one or more of the following situations or facts exist:

- That Competitive Sealed Bidding is determined to be an inadequate selection method for a construction contract that must consider other evaluation factors in addition to the cost factor such as capacity to execute the proposal, the experience in the area of knowledge or community to be served or studied or to be the site of the work.

- That a contract will require discussions between PDC and prospective contractors prior to the contract award to insure their full understanding and responsiveness to the contract requirements.