

**THEATER SUBDISTRICT COUNCIL LOCAL
DEVELOPMENT CORPORATION
PROCUREMENT POLICY**

I. METHODS OF SOURCE SELECTION

All contracts of the Theater Subdistrict Council Local Development Corporation (“TSC”) shall be awarded by competitive sealed bidding pursuant to Section (D) (Competitive Sealed Bidding), except as may be otherwise authorized or required by federal, New York State or New York City law, rules or regulations, and except as provided in this policy with respect to:

- (A) Small Purchases
- (B) Sole Source Procurement
- (C) Personal and Professional Services
- (D) Competitive Sealed Bidding
- (E) Competitive Sealed Proposals
- (F) Use of Other Governmental Contracts

All decisions, determinations and findings required to be made pursuant to this Procurement Policy shall be made in writing, with appropriate supporting documentation. All contracts awarded pursuant to this Procurement Policy shall require the authorization of TSC's Board of Directors, except for small purchases pursuant to subparagraph A.

A. **Small Purchases.** Notwithstanding anything to the contrary contained in this Article I, procurements for Small Purchases shall be governed only by this Section A.

(1) "Small Purchase" means any procurement the value of which is less than \$20,000. Procurements shall not be artificially divided in order to qualify as Small Purchases.

(2) For Small Purchase the value of which is \$10,000 or less, no competition is required. However, TSC shall use reasonable efforts to determine that the price or fee is reasonable.

(3) For Small Purchase the value of which is greater than \$10,000, TSC shall use reasonable efforts to obtain offers from at least three qualified persons or entities.

(4) Small Purchase contracts awarded pursuant to this Section A shall not require the authorization of TSC's Board of Directors.

B. **Sole Source Procurement.** Notwithstanding anything to the contrary

contained in this Article I, contracts for an amount greater than \$10,000 may only be awarded without competition upon specific authorization by TSC's Board of Directors.

C. Personal and Professional Services:

(1) Rationale. Personal and professional services may be procured to further the mission and purpose of TSC. The decision to procure technical, consultant or personal services shall include consideration of whether a procurement is: (a) desirable to develop, maintain or strengthen the relationships between non-profit and charitable organizations and the communities where services are to be provided, (b) cost-effective, or (c) necessary to (i) obtain special expertise, (ii) obtain personnel or expertise not available in the agency, (iii) to provide a service not needed on a long-term basis, (iv) accomplish work within a limited amount of time, or (v) avoid a conflict of interest.

(2) Bidder Selection Process. Personal and professional services shall be procured as provided in this Section C, except as otherwise authorized in this Article I.

- (a) TSC shall use reasonable efforts to obtain a minimum of three proposals from qualified persons or entities for each personal or professional services contract. If a minimum of three (3) proposals is not obtained, TSC shall document the reasons therefore.
- (b) TSC shall designate a selection committee, which may include staff to members, directors or officer, to review proposals received. The selection committee shall review all responsive proposals from responsible proposers. The selection committee may elect to interview and/or request additional information from some or all of the proposers in connection with its evaluation of proposals. The selection committee shall rank the proposals based on quality, price, and qualifications to provide the requested services.
- (c) TSC shall negotiate with the highest ranked proposer for an agreement for the performance of the requested services on terms satisfactory to TSC. If, despite good faith efforts, TSC is unable to reach a satisfactory agreement with the highest ranked proposer, it shall terminate such negotiations and enter into negotiations with the second-ranked proposer, and so on until an agreement is reached, provided that TSC may elect, at any time, to withdraw the procurement.

D. Competitive Sealed Bidding. Contracts for an amount greater than the Small Purchase limit shall be awarded by competitive sealed bidding, except as otherwise provided in this Article I.

(1) **Invitation for Bids.** An Invitation for Bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.

(2) **Public Notice.** Public notice of the Invitation for Bids shall be given by publication in the City Record a reasonable time prior to the date set forth therein for the opening of bids. TSC may also publish such notice in other media.

(3) **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, the name of each bidder and the bid security, if any, shall be recorded. The record and each bid shall be open to public inspection.

E. **Bid Acceptance and Bid Evaluation.** Bids may only be unconditionally accepted without alteration or correction on the part of the bidder except as authorized in this Section. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Any criteria that would affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used.

(1) **Correction or Withdrawal of Bids. Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids shall be permitted in instances in which the Chief Executive Officer finds that it is in TSC's interest to do so. After bid opening, no changes in bid prices or other changes prejudicial to the interest of TSC or fair competition shall be permitted.

(2) **Award.** The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. Notwithstanding the foregoing, any or all bids may be rejected when TSC reasonably deems it is in TSC's best interest to do so.

F. **Competitive Sealed Proposals**

(1) **Conditions for Use.** Contracts for an amount greater than the Small Purchase limit may be awarded by competitive sealed proposals only upon a determination by the Chief Executive Officer that it is not practicable or advantageous to use competitive sealed bidding. Grounds for such determination shall include, without limitation, that:

- (a) specifications cannot be made sufficiently definite and certain to permit selection based on bid price or evaluated bid price alone; and/or
- (b) judgment is required in evaluating proposals; and/or
- (c) evaluation of proposals requires a balancing of price, quality, and

other factors, including extending opportunity to minority and women-owned business and participation by New York state business enterprises and residents.

(2) **Request for Proposals.** Proposals shall be solicited through a Request for Proposals.

(3) **Public Notice.** Public notice of the Request for Proposals shall be given by publication in the City Record a reasonable time prior to the date set forth therein for the submission of proposals. TSC may also publish such notice in other media.

(4) **Receipt of Proposals.** Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A Register of Proposals shall be prepared and shall be open for public inspection after contract award.

(5) **Evaluation Factors.** Proposals shall be evaluated on the basis of the quality of the proposals, based on the relative importance of such criteria as capacity to execute the proposal; relevant expertise or experience, and price or cost.

(6) **Discussion with Responsible Offerors and Revisions to Proposals.** Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(7) **Award.** Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to TSC in accordance with subparagraph (5) above.

G. Exceptions to Formal Competitive Process

Notwithstanding any provision of law or this Article I requiring competition, the board of directors by resolution may waive competition under the following circumstances:

- (1) the purchase of goods or services from
 - (a) small business concerns, or
 - (b) certified minority or women-owned business enterprises; or
- (2) the purchase of goods or technology that are recycled or manufactured

The amount awarded without a formal competitive process is not to exceed two hundred thousand dollars (\$200,000).

H. Minority and Women-Owned Business Enterprises

(1) The CEO and Chief Contracting Officer of TSC are designated to oversee the TSC's procurement efforts to promote and assist the following:

(a) Participation by certified minority or women-owned business enterprises (MWBE) in the corporation's procurement opportunities and facilitation of the award of procurement contracts to such enterprises;

(b) The utilization of certified MWBEs as subcontractors and suppliers by entities having procurement contracts with the corporation; and

(c) The utilization of partnerships, joint ventures or similar arrangements between certified MWBEs and other entities having procurement contracts with the corporation.

(2) Notice of competitive bidding opportunities shall be given, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve minority and women-owned business enterprises providing the type of services procured by the corporation.

(3) TSC shall maintain lists of qualified certified MWBEs, including professional firms that have expressed an interest in doing business with the corporation and ensuring that such lists are updated regularly. TSC shall also consult the lists of certified MWBE maintained by the New York Department of Economic Development pursuant to Article 15-A of the Executive Law.

(4) TSC shall endeavor to have MWBEs participation in a minimum of thirty percent of procurement contracts awarded by TSC, as well as encourage the utilization of MWBE as subcontractors and suppliers by entities having procurement contracts with the corporation.

(5) TSC shall conduct procurements in a manner that will enable the corporation to achieve the maximum feasible portion of the goals established in I. I. 4 above, and that eliminates known barriers to participation by MWBEs in the corporation's procurements.

(6) TSC adopts the applicable provisions of the New York City Procurement Policy Board relating to the achievement of maximum feasible MWBE participation.

(7) Regardless of MWBE certification status, an unincorporated consultancy that would otherwise meet the MWBE certification requirements under New York State Executive Law 15-A shall be weighted similarly to a certified MWBE for the purposes of this section.

I. Use of Other Governmental Contracts

Notwithstanding any other provision of this Article I, if there is a Federal, New York State, New York City, or New York City Economic Development Corporation contract for goods or services that permits TSC to utilize such contract or to obtain goods and services from the contractor under such contract on terms substantially equal to those under such contract, TSC may utilize such contract or obtain goods and services from such contractor on terms substantially equal to those under such contract without using any other procurement method described in this Article I.

II. VENDOR RESPONSIBILITY

A. **Section 2-08 of New York City Procurement Policy Board Rules.** In making vendor responsibility determinations, the TSC shall be guided by the standards and procedures set forth in the Vendor Responsibility rules set forth in Section 2-08 of the New York City Procurement Policy Board Rules (the "PPB Rules").

B. **Additional Responsibility Determinations.** All contract awards for an amount above \$20,000, if not otherwise covered by Section 2-08 of the PPB Rules, shall be subject to internal vendor responsibility determination procedures of TSC.