



*Readopted December 9, 2020*

# Procurement Policy

The procurement requirements applicable to contracts of the Corporation set forth below shall be hereafter referred to as the “Requirements.” All capitalized terms not herein defined shall have the meaning set forth in the Corporation’s Master Contract with The City of New York. Where Federal or State law, rules or regulations applicable to any funds received by the Corporation prescribe procurement requirements that differ from these Requirements, the requirements of such laws, rules or regulations shall govern with respect to contracts funded with such funds. Where the Commissioner shall issue general or specific guidelines for certain purchases, such guidelines shall be followed.

## Section 1      Micro Purchases and Small Purchases

(a)      Micro Purchases. Procurements of construction contracts with values of \$35,000 or less or other procurements of goods and services with values of \$20,000 or less, may be made without any competition, provided the Corporation shall obtain offers from one or more persons or entities as it deems appropriate. If the Corporation only obtains an offer from one person or entity pursuant to this Section, it will not be considered a sole source procurement under this policy. Documentation of such purchases must identify the contractor, consultant or vendor contracted with, the services or goods purchased, and the contract amount paid.

(b)      Small Purchases. Any procurements above the Micro Purchase limits set forth above and not exceeding \$100,000 may be made without using any other procurement method in Sections 2 through 7, provided that the Corporation shall use reasonable efforts to obtain offers from at least three responsible persons or entities in connection with such procurement, unless the Commissioner agrees otherwise. The Corporation shall maintain records of the persons or entities approached and their responses.

(c)      General. If Section 3-08 (or any successor provision) of the City’s Procurement Policy Board Rules permits the City to make a small purchase or micro purchase procurement for goods, information technology, construction, construction-related services or other services or any other matter for a larger amount than the limit set forth above or below for the Corporation, then such higher limit shall also apply to the Corporation under this Section 1. Procurements shall not be artificially divided so as to constitute a small or micro purchase under this Section.

(d)      M/WBE Noncompetitive Small Purchases. No competition is required for the procurement of goods and services (other than human services or construction) from M/WBE vendors



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for amounts over \$20,000 and up to \$150,000, except that in making purchases pursuant to this paragraph, the Corporation must ensure that the noncompetitive price is reasonable<sup>1</sup> and that purchases are distributed appropriately among responsible M/WBE vendors.

## Section 2      Personal and Professional Services

(a) Personal and professional services shall be procured by the Corporation in accordance with this Section unless: (i) such services are procured pursuant to the Small Purchase, Sole Source or Emergency Procurement Sections herein; (ii) are for legal services, which shall be procured in accordance with Section 8 hereof; or (iii) are for services for which the Commissioner has specified a different method of procurement.

(b) It shall be the policy of the Corporation to announce publicly all requirements for personal and professional services, and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(c) In the procurement of personal or professional services, the President shall encourage firms or persons engaged in the lawful practice of their profession, including local, minority and women owned firms, to submit annually a statement of qualifications and performance data. In order to determine the highest qualified firm, the President or Consultant Selection Committee (as defined below) must conduct discussions regarding the contract and the relative utility of alternative methods of approach for furnishing the required services with no fewer than three contractors representing the most highly qualified to provide the services. The most highly qualified firms shall be selected based on the qualifications submitted either by annual statement or for the proposed contract and performance data on file with the Corporation, if such information exists. The President's decision to award the contract shall be based on the discussions using written criteria. A committee of qualified personnel of the Corporation (a "Consultant Selection Committee") shall evaluate current statements of qualification and performance data on file with the Corporation, together with those that may be submitted by other firms regarding the proposed contract to select the highest qualified firm rather than the President. A Consultant Selection Committee shall also be used if one or more contractors among the three most qualified firms has received in excess of \$100,000 in contracts from the Corporation during the fiscal year a contract will be awarded.

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<sup>1</sup> Methods for determining reasonableness of price may include, but are not limited to i) price or rate quotes from at least three M/WBE vendors; ii) cost comparisons to other governmental entities; iii) market or industry research; and iv) General Services Administration listed price or less, where applicable.



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(d) The President shall negotiate a contract with the highest qualified firm or person, at compensation that the President determines in writing to be fair and reasonable to the Corporation and the City. In making this decision, the President shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered, and where applicable, consider the standards of Certificate CS.29D (issued by OMB) or its successor. Should the President be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the President determines to be fair and reasonable to the Corporation and the City, the President shall terminate negotiations with that firm, and the President shall undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the President shall terminate negotiations and the President shall undertake negotiations with the third most qualified firm. Should the President be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the President shall select additional firms in order of their competence and qualifications, and shall continue negotiations in accordance with this Section until an agreement is reached. The President may also negotiate with multiple firms simultaneously.

Section 3      Sole Source Procurement

(a) A contract may be awarded for a supply, service or construction item without competition when permitted specifically by, or under general guidelines of, the Commissioner, or when, with the Commissioner's approval, the President determines in writing that there is only one source for the required supply, service or construction item.

(b) For contracts over the amount of \$25,000, the Corporation shall provide written notice to the Commissioner of the selection of a contractor without competition. The required notice shall set forth justification for such selection and the Commissioner shall have the right to disapprove the selection within 5 business days of receipt of the notice.

Section 4      Emergency Procurement

(a) Notwithstanding any other provision of these Requirements, the President may make or authorize others to make emergency procurement when there exists a threat to public health, welfare or safety or to property in which the City or the Corporation has an interest, or under emergency conditions as identified specifically by, or under general guidelines of, the Commissioner, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.



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(b) If the President awards a contract in excess of \$50,000 based on an emergency procurement, the President shall inform the Chair of the Board, the Vice Chair of the Board or the Chair of the Finance Committee of the award prior to contract execution, if possible, or promptly thereafter.

#### Section 5      Competitive Sealed Bidding

(a) Contracts by the Corporation shall be awarded by competitive sealed bidding except as otherwise provided in these Requirements.

(b) An Invitation for Bids shall be issued and shall include (whether by attachment or reference) a purchase description, and all contractual terms and conditions applicable to the procurement. Adequate 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. In addition, the Corporation may publish such notice in a newspaper of general circulation for a reasonable time prior to bid opening.

(c) 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.

(d) Bids shall be unconditionally accepted without alteration or correction on the part of the bidder except as authorized in this Section. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in instances in which the President finds that it is in the Corporation's and the City's interest to do so. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Corporation or the City or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the President.

(e) 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. Those criteria that will affect the bid price and be considered in evaluation for award shall 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.

(f) 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 the Corporation reasonably deems it is in the Corporation's or the City's interest to do so.



Section 6      Competitive Sealed Proposals

(a) Competitive Sealed Proposals is the procurement method primarily used for awarding contracts for professional services as described in Section 2. This method may also be used when permitted specifically by, or under general guidelines of, the Commissioner.

(b) Proposals shall be solicited through a Request for Proposals. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 5(b).

(c) 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.

(d) 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; if relevant, the experience in the area of knowledge or community to be served or studied or to be the site of the work; and the cost.

(e) As provided in the Request for Proposals and under guidelines of the Commissioner, 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.

(f) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Corporation and the City taking into consideration the evaluation factors set forth in subsection (d) of this Section. The contract file shall contain the basis on which the award is made.

Section 7      Contractors Recommended by Construction Manager

(a) When permitted specifically by, or under general guidelines of, the Commissioner, construction contracts may be entered into pursuant to the procedures set forth in this Section in lieu of the procedures set forth in other Sections of this Article.

(b) If the Corporation decides to enter into a contract pursuant to the procedures set forth in this Section, and the Corporation retains a Construction Manager, then, unless the Commissioner agrees to a lesser number, the Corporation's Construction Manager shall recommend to the Corporation a minimum of five potential contractors for each construction contract. The Corporation shall review such



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list of potential contractors and determine which of them the Corporation considers to be responsible. Bid packages will be sent by the Construction Manager or the Corporation to all such contractors. The Construction Manager and the Corporation shall review the proposals received from responding contractors, and the Construction Manager and the Corporation may negotiate with some or all of the responding contractors. Revisions to proposals may be permitted after submissions and prior to the award of a contract for the purpose of obtaining best and final offers.

(c) After consultations between the Construction Manager and the Corporation, the Construction Manager or the Corporation (at the Corporation's discretion) shall award the contract to the responsible contractor whose proposal the Corporation determines to be the most advantageous to the Corporation and the City, taking into consideration price and appropriate evaluation factors. The contract file shall contain the basis on which the award is made.

#### Section 8 Corporation Counsel

The Board of Directors of the Corporation shall approve the identity of all outside counsel retained by the Corporation except in an emergency. The Corporation's fee arrangements with all outside counsel shall be subject to approval by the Corporation Counsel of the City.

#### Section 9 Minority and Women Owned Businesses and Subtenants of the Corporation

(a) The Corporation shall make reasonable efforts, in accordance with applicable policy directives of the City and the Corporation, to (i) encourage Minority and Women Owned Business Enterprises ("MWBEs") to respond to procurement opportunities of the Corporation and (ii) meet or exceed the overall MWBE award of contract percentage goals set forth in such policy directives.

(b) If there are existing subtenants within the Brooklyn Navy Yard that provide any good or services that the Corporation seeks to procure, the Corporation will use reasonable efforts to apprise such subtenants of Corporation procurements for such goods or services.

#### Section 10 Use of Other Governmental Contracts

Notwithstanding any other provision of these Requirements, if there is a contract procured by the Federal Government, the State, the City, the New York City Economic Development Corporation, the Brooklyn Bridge Park Corporation or The Trust for Governors Island for goods and services that permits the Corporation 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, the Corporation 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 under these Requirements.



Section 11    Use of a Prequalified List (“PQL”)

(a)    When the Corporation has developed a PQL, the Corporation may use that PQL in connection with procuring any contract that it will enter into directly for construction or construction-related goods or services (including, without limitation, contracts for fixtures, furnishings, equipment and facilities management services related to construction), provided that the Corporation follows the procedures described in Section 11(b). If the Corporation has developed a PQL and has retained a construction manager for construction or construction-related services, the PQL may be used in connection with procuring any contract that the construction manager will enter into directly, provided that the procedures described in Section 11(c) are followed. The procedures set forth in this Section 11 may be used in lieu of the procedures set forth in Section 2 or and in conjunction with Section 12.

(b)    If, consistent with applicable law, the Corporation determines that the use of a PQL in the procurement of construction or construction-related goods or services under a specific contract in the Corporation’s portfolio of contracts would advance economic goals by promoting equal opportunity for contractors of all backgrounds, the Corporation may select potential contractors from the PQL to submit proposals. Proposal packages will be sent to all contractors selected by the Corporation from the PQL; provided that at least a total of five potential contractors must be asked to submit proposals, unless the Commissioner agrees to a lesser number. The Corporation shall review the proposals received and may negotiate with some or all of the responding contractors. Revisions to proposals may be permitted after submissions and prior to the award of a contract for the purpose of obtaining best and final offers. The Corporation shall award the contract to the responsible contractor whose proposal the Corporation determines to be the most advantageous to the Corporation and the City, taking into consideration price and appropriate evaluation factors. The contract file shall contain the basis on which the award is made.

(c)    If, consistent with applicable law, the Corporation determines that (i) it wishes to have a construction manager contract for construction or construction-related goods or services and (ii) the use of a PQL in the procurement of a specific contract for construction or construction-related services in the Corporation’s portfolio of contracts would advance economic goals by promoting equal opportunity for contractors of all backgrounds, the Corporation may select potential contractors from a PQL and may request that the construction manager recommend minority and/or women owned and/or disadvantaged business enterprises for the specific contract to supplement the potential contractors from a PQL. The Corporation shall review any such list of potential contractors proposed by the construction manager and determine which of them the Corporation considers to be appropriate. Proposal packages will be sent to all contractors selected by the Corporation from the PQL and those deemed appropriate by the Corporation from the construction manager’s recommendation; provided that at least a total of five



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potential contractors must be asked to submit proposals, unless the Commissioner agrees to a lesser number. The Corporation and/or the construction manager shall review the proposals received and may negotiate with some or all of the responding contractors. Revisions to proposals may be permitted after submissions and prior to the award of a contract for the purpose of obtaining best and final offers. The construction manager shall award the contract to the responsible contractor whose proposal the Corporation and the construction manager determine to be the most advantageous to the Corporation and the City, taking into consideration price and appropriate evaluation factors. The contract file shall contain the basis on which the award is made. The Corporation, in its sole discretion, may actively participate in any portion of this process.

#### Section 12 Construction Manager Subcontracts

When the Corporation, using a procurement method set forth in these Requirements, has retained a construction manager for work with regard to a construction project and/or with regard to facilities management services, such construction manager may only enter into construction, construction-related and/or facilities management-related subcontracts for goods or services (including, without limitation, contracts for fixtures, furnishings and equipment), related to such construction project or facilities management services, using procurement methods similar to those that the Corporation may use pursuant to Sections 2 or 7 were it contracting directly for such goods or services or the procurement method set forth in Section 11(c).