

ALLIANCE FOR FLUSHING MEADOWS CORONA PARK CORPORATION

PROCUREMENT POLICY AND PROCEDURES

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CHAPTER 1 – GENERAL PROVISIONS

- A. Purpose
- B. Federal or State Law
- C. Approvals
- D. Ethics
- E. Contract Files and Record Keeping
- F. Annual Reports

A. Purpose

The purpose of the Procurement Policy and Procedures is to set forth guidelines by which the Alliance for Flushing Meadows Corona Park Corporation (the “Corporation”) procures goods and services.

B. Federal or State Law

Where federal or state law, rules or regulations prescribe procurement requirements that differ from those set forth in the Procurement Policy and Procedures, the requirements of such laws, rules or regulations shall govern to the extent applicable.

C. Approval of the Board of Directors

In accordance with the Corporation’s By-Laws, the approval of a majority of the Board of Directors is required for contracts and aggregate payments valued in excess of \$10,000.

D. Ethics

Corporation employees responsible for procurements have a responsibility to ensure that their conduct will not violate the 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 that trust. To this end, Corporation employees having responsibility for contracting at all levels shall:

- encourage competition, prevent favoritism, and obtain the best value in the interest of the Corporation;
- place professional responsibilities above personal interests;
- ensure fair competitive access to Corporation 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 Corporation duties solely in the Corporation's interests; and
- report corruption and unethical practices, wherever and whenever discovered, to the Audit Committee of the Board of Directors of the Corporation and/or take such other action as is warranted by the situation or the Corporation's Code of Ethics.

E. Contract Files and Record Keeping

The Corporation shall ensure that copies of its contracts and other standard information regarding its contracts and vendors are reasonably available for inspection as required by law, with adequate protection for confidential information. The Corporation 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 the Corporation for a minimum of seven years beyond the expiration date of the contract before final disposal.

F. Annual Reports

The Corporation shall comply with the annual reporting requirements concerning contracts required by Public Authorities Law Section 2800(2)(a)(16).

CHAPTER 2 – PROCUREMENT PROCESS

- A. Specifications
- B. Bid Splitting
- C. Price/Cost Analysis
- D. Responsiveness
- E. Vendor Responsibility
- F. Contact

A. Specifications

- (1) **Purpose.** Specifications are used to obtain goods, services, and construction to fulfill the Corporation'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.
- (2) **Vendor Prohibition.** 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 goods, services, or construction, unless it is the Corporation's interest to allow such participation. In that case, the Corporation's contract file must contain the basis thereof to permit the vendor to

participate 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.

B. Bid Splitting

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

C. Public Notice

The Corporation shall provide adequate public notice of any Invitation to Bid and Request for Proposals (as detailed in Chapter 3) in a reasonable time prior to the date set forth therein for the opening of bids or proposals, as applicable. Such notice may be published in the City Record or a newspaper of general circulation or both.

D. Price/Cost Analysis

- (1) **Price/Cost Analysis Required.** Prior to vendor selection, the Executive Director shall determine that the contract price is fair and reasonable by using price/cost analysis (see below). The price/cost analysis must be maintained in the contract files.
- (2) **Techniques.** 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:
 - i. comparing proposed prices received in response to a solicitation;
 - ii. comparing current proposed prices to prior proposed prices and contract prices;
 - iii. 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;
 - iv. comparing proposed prices with competitive price lists;
 - v. comparing proposed prices with published market prices of commodities; or
 - vi. comparing proposed prices with cost estimates prepared by the Corporation's employees, or outside vendors charged with cost estimating.

E. Responsiveness

- (1) **Factors Affecting 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:
- i. Submission of bids or proposals in the form specified in the solicitation including all required signatures, and including all required pricing information;
 - ii. If bid or proposal price has been materially altered, alterations must be initialed by the bidder or proposer. If the alternation has not been initialed, and can be severed from the other items in the bid or proposal, then that particular item only may be considered non-responsive;
 - iii. 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;
 - iv. Submission of bid, performance or payments security, if required by the solicitation;
 - v. Submission of samples, literature, or other information, if required by the solicitation;
 - vi. Submission of all required disclosure statements; and
 - vii. Attendance at a mandatory pre-bid or pre-proposal conference or site visit, if applicable.
- (2) **Rejection.** Bids or proposals that fail to conform to the standards set forth above or any other requirements of a solicitation may be rejected, at the Corporation's sole discretion.

F. Vendor Responsibility

- (1) The Corporation's purchases shall be made from, and contracts shall be awarded to, responsible vendors only. A responsible vendor is one that has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of a contract. The Corporation must deem a vendor responsible for each new contract.
- (2) The Corporation shall ensure that solicitations require vendors to disclose non-responsibility determinations by governmental entities in compliance with the disclosure requirements of State Finance Law Section 139-k.
- (3) The Corporation shall include in its solicitations the statement of non-collusion in bids or proposals provided in Public Authorities Law Section 2878.
- (4) The Corporation may utilize several resources to gather information about the vendor in order to make a responsibility determination, including LexisNexis, the NYC

Department of Finance, and US Department of Labor. The responsibility determination should be supported by the information discovered through all sources.

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

G. Contact

The Executive Director shall designate, with regard to each procurement, a person or persons who are knowledgeable about the procurement and who may be contacted by proposers or bidders relative to the procurement. The Corporation shall comply with the restrictions concerning contacts with proposers or bidders in State Finance Law Section 139-j.

CHAPTER 3 – SOURCE SELECTION

- A. Methods of Source Selection
- B. Small Purchases
- C. Competitive Sealed Bidding
- D. Competitive Proposals
- E. Sole Source Procurements
- F. Emergency Procurements
- G. Contracts with Governmental Entities

A. Methods of Source Selection

Contracts by the Corporation shall be awarded by the procurement method determined to serve the best interests of the Corporation as provided in:

1. Section B (Small Purchases);
2. Section C (Competitive Sealed Bidding);
3. Section D (Competitive Proposals);
4. Section E (Sole Source Procurements);
5. Section F (Emergency Procurements); and
6. Section G (Contracts with Governmental Entities).

B. Small Purchases

- (1) The Corporation may make any procurement for an amount larger than \$10,000 but not more than \$100,000, including, without limitation, procurements for goods, information technology, construction or services of any type, without using any other procurement method described in this document, provided the

Corporation shall use reasonable efforts to obtain offers from at least five responsible persons or entities in connection with such procurement. Such offers shall be in writing.

- (2) With regard to procurements of \$20,000 or less, no competition is required except that in making purchases below this limit, the Executive Director must ensure that the noncompetitive price is reasonable and the contracting party is responsible. If the Corporation obtains an offer from only one person or entity pursuant to this Section, it will not be considered a Sole Source Procurement.
- (3) Procurement requirements shall not be artificially divided so as to constitute a small purchase.
- (4) The Corporation shall maintain records of the persons or entities approached and their responses.

C. Competitive Sealed Bidding

- (1) **Conditions for Use.** The Corporation may award contracts by competitive sealed bidding.
- (2) **Invitation for Bids.** 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.
- (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.
- (4) **Bid Acceptance and Bid Evaluation.** Bids shall 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. 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.
- (5) **Correction or Withdrawal of Bids; Cancellation of Awards.** 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 Executive Director finds that it is in the Corporation'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 fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids or to cancel awards of contracts based on

bid mistakes, shall be supported by a written determination made by the Executive Director.

- (6) **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 the Executive Director reasonably deems it is in the Corporation's interest to do so.

D. Competitive Proposals

- (1) **Conditions for Use.** The Corporation may award contracts by competitive proposal upon a determination by the Executive Director that it is in the best interests of the Corporation to do so.
- (2) **Requests for Proposals.** Competitive proposals shall be solicited through a Request for Proposal (RFP) which shall set forth the nature of the goods or services the Corporation is seeking to procure, including specifications where applicable or available, and shall solicit proposed prices, fees, charges or billing rates, where appropriate. An RFP shall contain criteria for evaluating the proposals. An RFP shall contain such other information and shall request from proposers such other information as the Corporation may deem necessary or desirable.
- (3) **Opening.** Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation.
- (4) **Solicitation.** The Corporation shall make reasonable efforts to obtain proposals from at least three respondents.
- (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; 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.
- (6) **Discussion with Responsible Respondents and Revisions to Proposals.** As provided in the Request for Proposals, discussions may be conducted with responsible respondents 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. Respondents 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 respondents.

- (7) **Award.** Award shall be made to the responsible respondent whose proposal is determined in writing to be the most advantageous to the Corporation taking into consideration the evaluation factors set forth in paragraph (4) above. The Corporation shall memorialize the basis on which the award is made and retain it in the contract file.
- (8) **Task Orders.** The Corporation may award to multiple contractors and execute retainer contracts to award work through task orders when the need for services arises. Task orders may be distributed using a mini-RFP process. All or selected retainer contractors may participate in the mini-RFP process and one or more retainer contractors may be awarded the task order(s).

E. Sole Source Procurement

A contract may be awarded for a supply, service or construction item without competition when the Executive Director determines in writing that there is only one source for the required supply, service or construction item to be obtained without competition.

F. Emergency Procurements

Notwithstanding any other provision in this document, the Corporation may make emergency procurements when the Executive Director determines there exists a threat to public health, welfare or safety or to property in which the Corporation has an interest, or under emergency conditions, provided that such emergency procurements 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.

G. Contracts with Governmental Entities

The Corporation may enter into contracts with governmental entities for the provision of services without competition if the Executive Director determines it is in the best interest of the Corporation.