

BUILD NYC RESOURCE CORPORATION

PROCUREMENT POLICY

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Section A. GENERAL

(1) **Definitions.** The following terms shall have the meanings respectively provided:

Board of Directors means the Board of Directors of the Corporation.

City means The City of New York.

Competitive Method of Procurement means the following Methods of Procurement: Section C, Small Purchases (but not with respect to contracts under \$5,000); Section F, Competitive Sealed Bids; Section G, Competitive Sealed Proposals; and Section H, Contractors Recommended by Construction Manager.

Construction-Related Supplies means the providing of tangible personalty, whether or not capital in nature, in connection with Construction Services, including but not limited to fixtures, furnishings and equipment.

Construction Services means construction and/or renovation activities.

Consultant Committee has the meaning provided in subsection 6 of this Section A.

Corporation means Build NYC Resource Corporation.

Executive Director means the Executive Director of the Corporation, or, upon his or her direction, the Deputy Executive Director of the Corporation.

Investigation means the then-current investigatory background check used by NYCEDC.

Method(s) of Procurement means collectively and individually the following procurement procedures: (i) *Use of NYCEDC* under Section B; (ii) *Small Purchases* under Section C; (iii) *Sole Source Procurement* under Section D; (iv) *Emergency Procurements* under Section E; (v) *Competitive Sealed Bidding* under Section F; (vi) *Competitive Sealed Proposals* under Section G; (vii) *Contactors Recommended by Construction Manager* under Section H; and (viii) *Use of other Governmental Contracts* under Section I.

Minimum Requirements means that: (i) the Offeror must have completed and submitted to the Procurement Officer the forms required for the Investigation; and (ii) the results of the Investigation must be satisfactory to the Corporation in its sole discretion.

NYCEDC means the New York City Economic Development Corporation in its capacity as the contract provider to the Corporation for all administrative services.

Offeror(s) has the meaning provided in subsection 4 of this Section A.

Procurement Officer(s) has the meaning provided in subsection 4 of this Section A.

Public Contract has the meaning provided in subsection 5 of this Section A.

Response means a response to a Solicitation.

Selection Criteria has the meaning provided in subsection 8 of this Section A.

Services means professional and consulting services.

Solicitation(s) means any notice, advertisement, bid, request for proposals, or any other request that is published or otherwise disseminated by the Corporation as part of one of the Competitive Methods of Procurement.

State means the State of New York.

Supplies means the providing of tangible and intangible goods, including (without limitation) software and capital items, including (with respect to machinery and equipment) installation and servicing, but not including construction-related personalty.

Supplies and/or Services means, depending on the context, all or any one of or any combination of the following: Services, Supplies, Construction Services, and/or Construction-Related Supplies.

(2) **Applicability of this Policy.** Except as provided for Public Contracts, this Policy shall apply to the procurement of contracts for all Supplies and/or Services to be purchased by the Corporation for its own use and account. This Policy shall not apply to the review and approval by the Corporation of any project or project entity for the purpose of providing to such project or project entity conduit bond financing.

(3) **Methods of Procurement.** Every contract for Supplies and/or Services procured by the Corporation shall be procured in accordance with and pursuant to one of the Methods of Procurement. Any contract for Supplies and/or Services procured by the Corporation shall be procured in accordance with and pursuant to *Competitive Sealed Bidding* unless one of the other Methods of Procurement is appropriate for such procurement.

(4) **Procurement Officer; Permitted Contacts.** For every Competitive Method of Procurement, the Executive Director or, at the Executive Director's designation, the head of the contract administration unit for NYCEDC, shall name one or more individuals to act on behalf of the Corporation for the purpose of receiving questions from, and providing information to, bidders, respondents or other offerors (or if individuals are acting on behalf of entities that are bidders, respondents or other offerors, then, to such individuals) (the "**Offeror(s)**"). The person or persons so named shall be referred to as the "**Procurement Officer(s)**."

(5) **Public Contracts.** When the Corporation funds contract payments with monies provided by the federal government and/or the State and/or the City; and where as a condition to using such monies, federal and/or State and/or City law, rules or regulations prescribe procurement requirements that exceed or conflict with those set forth in this Policy, the requirements of such laws, rules or regulations shall govern. Corporation contracts that are so funded, whether in whole or in part, shall be referred to as "**Public Contracts**."

(6) **Board of Directors; Executive Director; Selection Consultant Committee.**

(a) With the exception of contracts for \$5,000 or less, the Board of Directors shall approve all contracts for Supplies and/or Services except that in the case of Emergency Procurements, such approvals may be retroactive.

(b) The Board of Directors may (but shall not be obligated to) appoint a Selection Consultant Committee (the “**Consultant Committee**”) to evaluate and recommend Offerors and their Responses for any Supplies and/or Services for which a Competitive Method of Procurement is used. If the Board appoints a Consultant Committee, then the Consultant Committee shall be responsible for recommending Offerors and Responses (as selected pursuant to a Competitive Method of Procurement) to the Board of Directors. If the Board of Directors does not appoint a Consultant Committee, the Executive Director shall make such recommendations.

(7) **Minimum Requirements.** To be considered in a Competitive Method of Procurement, an Offeror must satisfy (and to the extent possible demonstrate in its Response that it satisfies) the Minimum Requirements.

(8) **Selection Criteria.** For all contracts for which a Competitive Method of Procurement is used, the Executive Director (or, where applicable, the Consultant Committee) shall in writing specify criteria by which potential Offerors (and their Responses) are to be evaluated (the “**Selection Criteria**”).

(9) **Applicability of Differing NYCEDC Requirements.** If NYCEDC, whether by contract or decision by the Deputy Mayor for Economic Development or by other means, amends its procurement policy and procedures, this Policy shall be similarly and automatically amended without approval by the Board of Directors except to the extent otherwise required by law.

(10) **MWBEs.** The Corporation shall seek to encourage participation by minority and women-owned business enterprises (i.e., “MWBEs”) in providing Supplies and/or Services to the Corporation.

Section B. USE OF NYCEDC

(1) The Corporation may procure NYCEDC as the contractor for providing services for the administration and operation of the Corporation, and may do so without competition and without complying with any other Method of Procurement. In adopting this Policy, the Board of Directors hereby finds and determines as follows: (a) Corporation has no employees; (b) staff personnel of NYCEDC have, since the establishment of the Corporation, administered and operated the Corporation pursuant to a contract between the Corporation and NYCEDC; (c) as to staffing, the operational identity between the Corporation and NYCEDC has always been and remains integrated; (d) it is in the best interests of the Corporation to continue this contractual and operational relationship with NYCEDC; and (e) were the relationship to be discontinued, the resulting inefficiencies would be deleterious to the effective operation of the Corporation, and (f) to competitively seek an entity to administer and operate the Corporation would not be in the Corporation’s best interest.

(2) The Corporation may procure contracts for Services through NYCEDC (other than those described in subsection (1) immediately preceding) as contractor whereby NYCEDC obtains the desired services from a third party as subcontractor, and the Corporation may select

NYCEDC for this purpose on a non-competitive basis without the Corporation otherwise complying with any other Method of Procurement; *provided, however*, that NYCEDC shall procure the subcontractor in question in accordance with NYCEDC's then-current procurement policy and procedures. In adopting this Policy, the Board of Directors hereby finds and determines as follows: (a) for certain Services, procuring a contractor competitively when the contractor is merely acting in an administrative or pass-through capacity, is not in the best interests of the Corporation; (b) selecting NYCEDC non-competitively for this administrative and pass-through role, given that NYCEDC staff personnel provide all day-to-day administrative services to the Corporation, is by far the most efficient alternative to competitively selecting an entity for this purpose; and (c) by requiring NYCEDC to procure the subcontractor in accordance with NYCEDC's own procurement policy and procedures, the Corporation is fulfilling the intent of this Policy.

Section C. SMALL PURCHASES

The procurement of a contract for Supplies and/or Services for an amount greater than \$5,000 but not more than \$100,000, shall consist of using reasonable efforts to obtain Responses from at least three Offerors. With regard to procurements of \$5,000 or less, the Corporation shall not be required to engage in any procurement process. If the Corporation only obtains a Response from one Offeror pursuant to this Section C, the procurement will not be considered sole-source under this Policy. In general, procurements shall not be artificially divided so as to constitute a small purchase under this Section C. Procurement under this Section C need not be based exclusively on cost.

Section D. SOLE SOURCE PROCUREMENT

(1) **For Services.** Subject to review and approval by the Consultant Committee (if one has been appointed by the Board of Directors pursuant to subsection A.7 of this Policy), the Executive Director may award a contract for Services to a consultant on a sole-source basis if either of the following circumstances applies: (a) the consultant has unique capabilities or has exclusive access to unique technical data, either of which is relevant to the progress and/or completion of a project; or (b) a consultant's recent experience with a specialized project or its geographical location, or the consultant's familiarity with local community groups, would add significantly to the overall quality of either the planning, design or construction of the project.

(2) **For Supplies.** Subject to review and approval of the Consultant Committee (if one has been appointed by the Board of Directors pursuant to subsection A.7 of this Policy), the Executive Director may award to a vendor a contract for Supplies on a sole-source basis if either of the following circumstances applies: (a) the vendor is the only vendor that makes or supplies or installs or services a unique item (new or replacement); (in other words, this is a circumstance in which the Corporation would have no visible alternative); or (b) the Corporation has attempted to procure a vendor through one of the Competitive Methods of Procurement but the effort has failed to produce a Response or the Responses that were received were non-responsive; and, as a consequence, the Corporation must procure a vendor on a sole-source basis in order to avoid possible cost overruns or a delay in the project.

Section E. EMERGENCY PROCUREMENTS

(1) **General.** Upon determination by the Executive Director that one of the emergency circumstances described in subsection (2) following applies, the Executive Director may direct the Corporation to enter into a contract for Supplies and/or Services without the benefit of a Competitive Method of Procurement; provided, however, that the Corporation shall use such competitive procedures as may be practicable without endangering life, safety, health, welfare or property, and without impairing the success of the project to which the emergency pertains. Should the Corporation use competition, the resulting procurement need not be based exclusively on cost.

(2) **Emergencies.** The following are emergencies under which the Executive Director may direct the Corporation to enter into a contract without benefit of a Competitive Method of Procurement: (a) procurement must occur immediately in order to avoid threat to life, safety, health, welfare or property; or (b) the failure to procure immediately is likely to threaten or jeopardize the security or value of a project or the property or goods associated with a project; or (c) immediate procurement is necessary in order to avoid cost overruns or substantial delay in project completion. For purposes of clause “c,” “substantial delay” in construction projects includes, but shall not be limited to, delay in a scheduled delivery date when such date is intrinsic to the progress of the construction.

Section F. COMPETITIVE SEALED BIDDING

(1) **Applicability.** Except as provided in Sections B through E and Sections F through I, all contracts for Supplies and/or Services of the Corporation shall be competitively bid under sealed bids in accordance with the provisions of this Section F. (For purposes of this Section F, the undefined term “bid(s)” shall be used interchangeably with the term “Response(s)”)

(2) **Invitation for Bids.** The Executive Director shall issue a Solicitation in the form of an “Invitation for Bids.” The Invitation for Bids shall include (whether by attachment or reference) a purchase description, and all contractual terms and conditions applicable to the procurement.

(3) **Public Notice.** Adequate public notice of the Invitation for Bids shall be provided 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.

(4) **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.

(5) **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 F.

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.

(6) **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 or contracts based on bid mistakes, shall be supported by a written determination made by the Executive Director.

(7) **Award.** The contract shall be awarded to the bid that (a) is lowest in cost, and (b) is responsive to the Invitation to Bids, and (c) meets the Minimum Criteria. Notwithstanding the foregoing, any or all bids may be rejected when the Corporation reasonably deems it is in the Corporation's interest to do so.

Section G. COMPETITIVE SEALED PROPOSALS

(1) **Applicability.** The Corporation may procure contractors through Competitive Sealed Proposals under this Section G for the following: (a) for Services; and (b) when the Executive Director determines (subject to review and approval of the Consultant Committee if one has been appointed by the Board of Directors pursuant to subsection A.7 of this Policy) that one or more of the following circumstances applies, then, under such circumstance, for Supplies, for Construction Services, and for Construction-Related Supplies: (x) Competitive Sealed Bidding is inadequate because of the importance of considerations other than cost; (e.g., the capacity of an Offeror to perform as stated in its Response; experience in the required area of knowledge; experience in the community to be served or studied; experience in the community where the contract work is to be performed); or (y) discussions with Offerors that are potential awardees are necessary in order to insure their full understanding and responsiveness to contract requirements; or (z) in the case of Construction Services, the needed expertise and experience is so specialized as to be outside the expertise and experience of most construction contractors.

(2) **Request for Proposals.** The Corporation shall issue a Solicitation in the form of a **“Request for Proposals.”**

(3) **Public Notice.** The Corporation shall provide adequate public notice for the Request for Proposals.

(4) **Receipt of Proposals.** When opening Responses for review, the Corporation shall not, for the duration of the Restricted Period, disclose the contents of the Responses to competing Offerors. A **“Register of Proposals”** shall be prepared and shall be open for public

inspection after the Restricted Period. The Register of Proposals shall contain the names of all Offerors and the prices respectively proposed in their Responses.

(5) **Selection Criteria.** For purposes of this Section G, the Selection Criteria shall include but not be limited to the following: cost; whether the Offeror has the capacity to execute the contract in accordance with the Offeror's Response; whether the Offeror has relevant experience and/or knowledge; and if relevant, whether the Offeror has experience in and knowledge of the community to be served or studied or in which work is to be performed. Procurement under this Section G need not be based exclusively on cost.

(6) **Discussion with Responsible Offerors and Revisions to Proposals.** With respect to those Responses that the Executive Director or the Consultant Committee (as applicable) deem to be (in their sole discretion) candidates for award, the Corporation may hold discussions with the relevant Offerors to clarify and fully understand their Responses. The Corporation shall treat such Offerors fairly and equably, particularly in connection with providing opportunities to amend Responses so that the Corporation may obtain best and final Responses. The Corporation shall not divulge information derived from Responses submitted by competing Offerors except as provided in subsection 4 hereinabove

Section H. CONTRACTORS RECOMMENDED BY CONSTRUCTION MANAGER

(1) **Applicability.** When the Corporation has retained a construction manager for Construction Services, any contract for Construction Services (other than the contract with the construction manager itself) or Construction-Related Supplies may be procured pursuant to the procedure set forth in this Section H in lieu of other Competitive Methods of Procurement. For purposes of this Section H, "Executive Director" shall mean Executive Director or Consultant Committee as applicable.

(2) **Selection of Contractors.** Procurement under this Section H consists of the following: (a) the construction manager recommends to the Executive Director a minimum of five potential contractors; (b) the Executive Director reviews such list of potential contractors and determines which of them the Corporation considers to be appropriate; (c) the selected contractors are invited to submit Responses; (d) the construction manager and the Executive Director review the Responses and in their discretion, negotiate with some or all of the Offerors. Revisions may be permitted to obtain best and final Responses.

(3) **Award.** After consulting with the construction manager, the Executive Director (or the Consultant Committee if one has been appointed pursuant to subsection A(7) of this Policy) shall recommend to the Board of Directors the Response and Offeror deemed to be the most advantageous to the Corporation. Procurement under this Section H need not be exclusively based upon cost.

(4) **Procurement of Construction Manager.** Nothing in this Policy may be construed to exempt the procurement of a construction manager by the Corporation from the requirements of this Policy.

Section I. USE OF OTHER GOVERNMENTAL CONTRACTS

Notwithstanding any other provision of this Policy, if there is a federal, State or City contract for Supplies and/or Services that permits the Corporation to utilize such contract or to obtain Supplies and/or Services from the contractor under substantially similar terms, the Corporation may utilize such existing contract (or enter into a new contract on substantially similar terms) without using any Competitive Method of Procurement. Procurement under this Section I need not be exclusively based upon cost.