

GUIDELINES FOR PROCUREMENT CONTRACTS

(January 2015)

I. **Title.** The following guidelines detail the policy of the Albany Port District Commission (“APDC”) regarding the use, awarding, monitoring, and reporting of procurement contracts. They shall be referred to herein as the “Guidelines”.

II. **Definitions.**

- A) Procurement Contract – any written agreement for the acquisition of Commodities and/or Services.
- B) Commodities – standard articles of commerce in the form of material goods, supplies, products or similar items.
- C) Services – performance of a task or tasks, which may include use of a material good or a quantity of material goods (includes “technology” which may be a good or Service or combination thereof).
- D) Professional Services – any written agreement to provide a Service, including but not limited to legal, accounting, management consulting, investing, banking, planning, training, statistical, research, public relations, architectural, engineering, surveying, performance (of an artistic or entertainment nature), or services of a consulting, professional, or technical nature.
- E) Cost – as distinguished from “price,” Costs includes conversion costs, life-cycle costs, and encompasses “price” which is the amount charged by the vendor for the given Commodity or Service.
- F) Responsive – means a bidder meeting the minimum specifications or requirements as prescribed in the solicitation document.
- G) Responsible – term applies to a bidder’s qualifications including but not limited to performance capabilities, financial stability, integrity, and other relevant criteria established in applicable statutes or case law.
- H) Best Value – basis for awarding all Service contracts to the bidder whom optimizes quality, cost and efficiency, among responsive and responsible bidders.
- I) Lowest Price – basis for awarding all Commodity contracts among responsive and responsible bidders.
- J) Procurement Record – this record maintains documentation concerning a particular procurement process and the decisions made during the process. The Procurement Record is designed to both serve and protect the APDC, the business community and the public during and after the procurement.

III. **Policy.** The goal of the APDC procurement process is to acquire Commodities and Services that enable the APDC to fulfill its respective mission while ensuring fair and open competition. The APDC's procurement process is designed to: (a) guard against favoritism, improvidence, extravagance, fraud, and corruption; (b) ensure that the results meet agency needs; and (c) protect the interests of the public. The APDC shall award contracts only to responsive and responsible bidders.

IV. **Responsibility for Procurement Contracts.** The General Manager, or his duly appointed designee, has the overall day-to-day responsibility and oversight regarding the awarding and monitoring of procurement contracts.

V. **State Finance Law §§139-j and 139-k (Procurement Lobbying).** Pursuant to State Finance Law §§139-j and 139-k, certain restrictions exist on communications between a governmental entity (APDC and any other state government entity) and an offerer/bidder during the procurement process for all contracts involving an annual expenditure greater than \$15,000. An offerer/bidder is restricted from making "contacts" from the earliest notice of intent to solicit offers (in most instances this would be the release of an RFP) through final award and approval of the Procurement Contract by the APDC ("Restricted Period") to other than a staff member (or members) designated by the APDC unless it is a contact that is included among certain statutory exceptions. APDC employees are also required to obtain certain information when contacted during the restricted period – this involves completing a "APDC Record of Contact" form and placing it in the relevant Procurement Record.

The APDC must also make a determination of the responsibility of offerer/bidders. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, an offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found in the appropriate statutes and on the New York State Office of General Services website under the link for the "Advisory Council on Procurement Lobbying."

Additionally, certain affirmations must be provided to the APDC by bidders and certain provisions must be contained within any contract/award resulting from this RFP.

1. The APDC must obtain from all offerers an affirmation of understanding and agreement to comply with the restrictions regarding permissible contacts during the restricted period.
2. The APDC must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for Procurement Contracts.
3. The APDC must obtain from all offerers a certification that the information is complete, true and accurate regarding any prior findings of non-responsibility.

4. New York State Finance Law §139-k(5) provides that every procurement contract award subject to the provisions of State Finance Law §§139-k and 139-j shall contain a provision authorizing the Governmental Entity to terminate the contract in the event that the certification is found to be intentionally false or intentionally incomplete. An example of such language is provided below:

The APDC reserves the right to terminate this contract in the event it is found that the certification filed by the offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the APDC may exercise its termination right by providing written notification to the offerer in accordance with the written notification terms of this contract.

VI. Requirements Regarding the Selection of Procurement Contractors.

A. Competitive Process for Commodities and Services.

- 1) Selection of contractors for Commodities and Services shall be made on a competitive basis and shall depend upon the estimated or actual cost of the Commodities or Services as follows:

Level	Estimated or Actual Cost	Required Level of Competition	Required Level of Authorization
I	Up to \$300	Not Required	General Manager
II	\$301-\$5,000	3 Phone Quotes*	Director of Economic Development and Procurement, Chief Financial Officer, and General Manager
III	\$5,001 - \$15,000	3 Written Quotes*	Director of Economic Development and Procurement, Chief Financial Officer, and General Manager
IV	>\$15,000	RFP *	Commissioners
V	Service Contracts with a term greater than one year	Varies	Commissioners

Contracts for Commodities will be awarded to the responsive and responsible bidder with the lowest price. Contracts for Services will be awarded on a “Best Value” Determination.

***For each procurement in levels II, III and IV, a Purchase Order/Requisition Form must be completed to document the decisions made. All quotes/proposals received, APDC Record of Contact Forms (for level III procurements), and any other records documenting the decision process must be attached to the Purchase Order/Requisition Form (or in a separate location if size does not allow).**

For all procurements in levels II, III and IV, a Purchase Order/Requisition Form must be completed and approved PRIOR TO PROCURING THE GOODS AND SERVICES. This Purchase Order/Requisition Form is attached at the conclusion of these Guidelines.

If there are not three vendors who provide the Service, or if the Port was unsuccessful in having three firms provide a quote, then this must be noted on the Purchase Order/Requisition Form.

- 2) **All purchases, regardless of size, must be approved before ordering according to the chart in section VI.A.1 above.**
- 3) Reoccurring purchases of amounts less than \$300 (not reaching Category I) that are estimated to aggregate to more than \$1,800 in a twelve month period should be competitively bid (3 phone quotes).
- 4) All contracts involving services to be provided over a period in excess of one year shall require the authorization of the Board and an annual review by the Board.

B. Waiver of Competition. The Commission waives the use of the competitive procedures outlined in VI.A.1 above in the following instances:

- 1) Preferred Sources. To advance special social and economic goals, certain providers have “Preferred Source” status under the law. Acquisitions from these providers are not subject to competitive procurement requirements. A list (“List”) of Commodities and Services available from Preferred Sources and the applicable procedures are maintained by the NYS Office of General Services at URL <http://www.ogs.state.ny.us/procurecounc/pdfdoc/pslist.pdf>.
- 2) Emergencies. The role of the Port dictates that the operation be maintained on a continuous basis without interruption. From time to time, the General Manager may determine that emergency purchases are necessary or contracts be executed to keep the Port safe, secure, protect life or property, and when it is the best interest to preserve order or public health. A written explanation of the nature of the emergency must be completed and included in the Procurement Record.

Such emergency procurements exceeding \$15,000 will be presented to the Board at its next regularly scheduled meeting.

- 3) Sole or Single Source Purchases. When only one source is available or a single source is used, a written statement explaining the need for sole or single source acquisition must be completed and included in the Procurement Record. For example, specific expertise, qualifications, or prior experience with the APDC may justify the use of single source without the need for competition even when others could perform the work.
- 4) Purchases from Certified MWBEs or Small Business Concerns. Competition may be waived in the case of New York Certified MWBEs and Small Business Concerns¹ in an amount not exceeding \$200,000.
- 5) Warranties. Under a warranty, the APDC may be required to obtain Service from a manufacturer-designated entity without competition. Additionally, certain vendors that may have installed a product may be retained to continue maintenance of such products if the Commission determines that competition of such continued maintenance is not in the interest of the APDC.
- 6) Professional Services. Professional services vendors must be selected based on accountability, reliability, responsibility, skill, conflicts of interests, reputation, education and training, judgment, integrity, continuity of service, moral worth, and other factors not easily quantified or evaluated in a competitive procurement process. Furthermore, certain professional services to be provided to the APDC, e.g., legal and accounting services, impact liability issues of the APDC and its directors. These qualifications and the concerns of the APDC regarding its liability and the liability of its directors are not necessarily found or addressed in the individual, company or firm that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

In determining whether a service fits into this category, the APDC shall take into consideration the following guidelines: (a) whether the services are subject to state licensing or testing requirements; (b) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and (c) whether the services require a personal relationship between the individual and the directors/management staff of the APDC. Professional or technical services shall include but not be limited to the following: services of an attorney (including bond counsel); services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing services involving

¹ For purposes of these guidelines, the term “Small Business Concern” means a business which is resident in New York, independently owned and operated, not dominant in its field and employs one hundred or less persons.

extensive writing, editing or art work; management of APDC-owned property; real estate brokerage services; appraisers; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

C. Procedures When Using an RFP for Commodities or Services.

- 1) A written statement containing a description of the Commodities and/or Services, the required estimated schedule or duration of the Commodities and/or Services, and any other information required to enable the bidders to understand the service/commodity requirement, shall be included.
- 2) The RFP shall be advertised, or sent to as many firms as are reasonable, to assure competition, including any M/WBE firms. The APDC shall submit the notice of procurement to the New York State Contract Reporter. This requirement need not be followed under the following circumstances:
 - a. Procurement contracts awarded without competition in accordance with section VI. B.; or
 - b. Procurement contracts being rebid for substantially the same Commodities or Services within forty-five (45) days after the date or proposals were originally due;
- 3) Language required under Article 15-A (sections 312 and 313) of the New York State Executive Law regarding equal employment opportunities without discrimination will be included within the RFP.
- 4) The RFP shall describe the required Commodities or Services, relevant completion dates or time requirements, bidder qualifications, M/WBE requirements, and other related information and shall contain a requirement for the date, bids, time and place the proposals must be received. In cases of sealed bids, the bids should be opened at a designated time and place by the General Manager or duly appointed representative.
- 5) Any information concerning the solicitation or changes to the RFP must be communicated in writing to all bidders participating in the process.
- 6) A Procurement Record must be maintained which documents decisions made during the procurement process, including but not limited to the quantification of the application of criteria to determine an award based on “Best Value.”
- 7) In those situations where “Best Value” is used to award the contract, a description of those factors to be considered (including cost) and their

relative importance must be provided in the RFP.

- 8) Bids are to be reviewed on the basis of the requirements in the RFP.
- 9) On request, unsuccessful bidders will be afforded an opportunity to learn why their proposals were not selected.

D. Service Contracts with terms in excess of one year. In accordance with NYS Public Authorities Law (“PBA”), service contracts with a term exceeding one year (regardless of dollar amount) are to be reviewed annually by the APDC Board.

E. Real Estate Transactions. Please see the APDC Property Disposition Guidelines/Property Acquisition Policy for the appropriate procedures.

VII. Minority and Women Owned Business Enterprises. Minority and women-owned businesses shall be given full opportunity to compete in all types of procurement contracts. Please see the APDC Minority and Women Owned Business Enterprise (M/WBE) Master Goal Plan.

IX. Involvement of Former Officers or Employees. No procurement contracts shall be entered into with current and/or former officers or employees of the APDC except by a resolution adopted by the Commissioners upon showing that such contract is in the best interest of the APDC, and then only to the extent permitted by the Public Officers Law and other applicable provisions of law.

X. Publicly Available Reports. In accordance with the Public Authority Law, a publicly available report shall be prepared on not less than an annual basis, summarizing procurement activity by the APDC, including a listing of all procurement contracts, and the status report. Only contracts in the actual or estimated amount of more than \$5,000 and for at least one year in duration need be included.

XI. Third Party Rights; Validity of Contracts.

A. These Guidelines are intended for the guidance of the officers and employees of the APDC only, and nothing contained herein is intended or shall be construed to confer upon any person, firm, or corporation any right, remedy, claim or benefit under, or by reason, of any requirement or provision hereof.

B. Nothing contained in the Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of the Guidelines.

XII. Miscellaneous.

- A. Where applicable federal, state, or local laws, ordinances, codes, rules or regulations containing requirements which are in conflict with or impose greater obligations upon the APDC than these Guidelines, then such requirements shall take precedence over those contained herein.
- B. The APDC shall not be precluded from adopting additional requirements relating to the matters covered by these Guidelines.

XIII. Effective Date. The Guidelines shall be effective on March 1, 2014.