

ROOSEVELT ISLAND OPERATING CORPORATION

Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts

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1. Procurement Contract: Overview and Requirements

The following guidelines (the "Guidelines") are applicable to the use, awarding, monitoring and reporting of procurement contracts of the Roosevelt Island Operating Corporation ("RIOC"). RIOC is required to adopt procurement guidelines by Article 9, Title 4 of the Public Authorities Law. The same law requires annual review and updating of the guidelines by the RIOC Board of Directors ("Board").

The Guidelines are modeled on the New York State Procurement Guidelines published by the State Procurement Council (the "SPC Guidelines"). The SPC Guidelines apply to all New York state agencies. While RIOC is not a state agency, as that term is defined in the SPC Guidelines, as best practices, RIOC used the SPC Guidelines as a model because they provide useful guidance for procurement for public authorities as well.

The SPC Guidelines cover some issues and procedures rarely encountered by RIOC, but should be consulted by staff if a situation arises that does not appear to be covered in these Guidelines, since useful guidance may thereby be obtained.

In these RIOC Guidelines, a person, firm or corporation who wishes to provide goods and/or services to RIOC may be called a "vendor" or "offerer" or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming an RIOC vendor, a "respondent."

1.1. Contracts covered, and not covered, by the Guidelines

Pursuant to Public Authorities Law § 2879 (2), "Procurement Contracts" are any written agreements for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more. For purposes of compliance with anti-lobbying laws contained in State Finance Law § 139-j and 139-k (see Section 8.1), Procurement Contracts also include the purchase, lease or grant of any other interest in real property which involves an estimated annualized expenditure in excess of fifteen thousand dollars (\$15,000).

Disposition of property (real or personal) by RIOC is not a procurement covered by these Guidelines, but is instead subject to RIOC's Property Disposition Guidelines. However, where a property disposition requires a competitive process, that process should be conducted in accordance with these Guidelines.

A *contract or memorandum of understanding* ("MOU") with a sister State agency or authority is not considered a Procurement Contract covered by these Guidelines. Note, however, that appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement) may apply to such agreements.

Procurement Contracts *below \$175,000* may be handled by Purchase Order.

1.2. Types of Procurement Contracts

Procurement Contracts for personal services include legal, accounting, management consulting, investment banking, planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of RIOC. The reasons for the use of personal services include:

- a. Requirements of special expertise or unusual qualifications;
- b. Nature, magnitude or complexity of services required;
- c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- d. Lower cost;
- e. Short-term or infrequent need for the services; and
- f. Distance of the location(s) where the services must be performed from RIOC offices or facilities.

The types of goods and services requiring Procurement Contracts include goods and services needed to proceed with a RIOC project, or to support the administrative needs of RIOC. The types of goods that may be procured cover the entire spectrum, ranging from paper and pens to motor vehicles.

1.3. General Procurement Principles

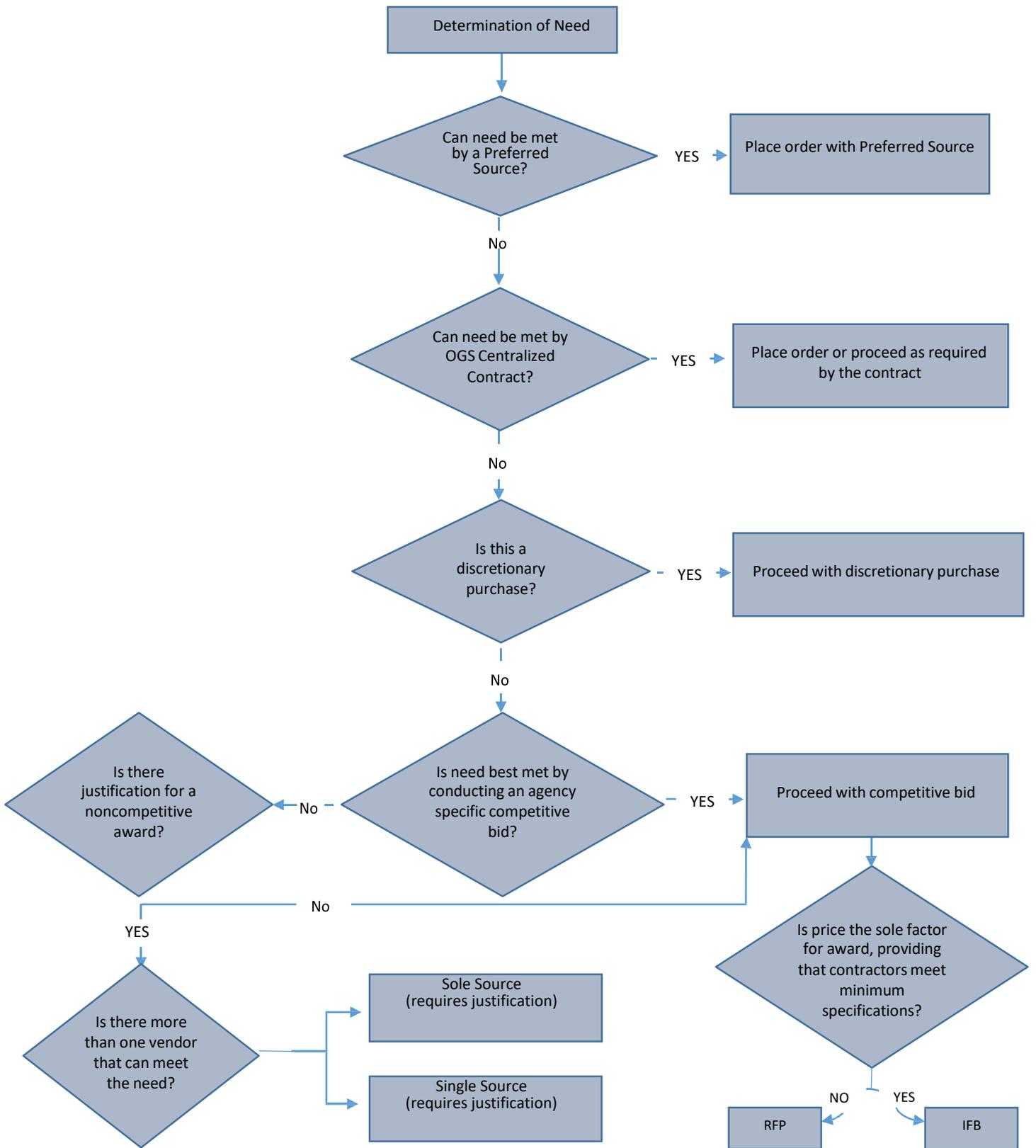
RIOC's procurement process is designed to:

- a. Ensure fair and open competition;
- b. Guard against favoritism, improvidence, extravagance, fraud and corruption;
- c. Ensure that the results meet agency needs;
- d. Provide checks and balances to regulate agency procurement activities; and
- e. Protect the interests of RIOC, the state and taxpayers.

Procurement Contracts are to be awarded on a competitive basis to the maximum extent practicable. Such awards are generally made after notice is published in the New York State Contract Reporter where the amount of the contract is equal to or greater than \$50,000 and, after the evaluation of proposals obtained, whenever practicable, from at least three qualified vendors or respondents. (See Section 7: Types of Solicitations).

Competition in the procurement process serves both RIOC and potential vendors by ensuring that the procurement process produces an optimal solution at a reasonable price; and allowing qualified vendors an opportunity to obtain RIOC business, while the process guards against inflated pricing, favoritism, fraud and collusion; and allows all qualified vendors an opportunity to obtain RIOC business.

The Procurement Process Guide



2. Procurement Vehicles

2.1 NYS Preferred Sources

Goods and services needed by RIOC may be available, without the need for competitive procurement from New York State Preferred Sources. If a Preferred Source has goods or services available in the form, function and utility required by RIOC, at a price not more than 15% above the prevailing market rate, the goods or services should be obtained through the Preferred Source in the following prioritized order: NYS Department of Correctional Services Correctional Industries Program (CORCRAFT); approved charitable non-profit agencies for the blind; and approved charitable non-profit agencies for the severely disabled, qualified programs for the mentally ill, and qualified veterans workshops. For information on these Preferred Sources, see State Finance Law § 162 and the Office of General Services' Preferred Sources Guide.

2.2. OGS Centralized Contracts

Goods and services needed by RIOC may be available, without the need for competitive procurement, through centralized statewide contracts held by the NYS Office of General Services ("OGS"). These centralized contracts are divided into three types: *commodity, service, and technology contracts*. Information about centralized contract offerings can be obtained from the list of approved state contractors maintained by OGS.

The OGS Procurement Services Group (PSG) establishes centralized contracts in the form, function and utility required by State entities, for a wide range of items commonly acquired by these entities. If commodities or services are available from a centralized contract in form, function and utility consistent with RIOC's need, they may be purchased from the centralized contract. However, RIOC may competitively procure items otherwise available on a centralized contract when the resultant price is less ("OGS or less"). Note that even if a OGS centralized contractor is available, it is recommended that staff obtain three price quotes from other OGS contractors or other vendors not on the OGS list, unless a compelling justification exists (e.g., experience with a particular project).

In addition, RIOC may conduct a formal mini-bid process by developing a project definition that outlines its specific requirements and solicits bids from qualified backdrop contractors to determine the best value solution. The best value may also be the lowest price. The exact processes to be followed are set forth either in the OGS backdrop contract or the guidelines associated with that contract on the OGS website.

2.3. Discretionary Purchases

RIOC may purchase commodities or services from small business enterprises, Minority and Women-Owned Businesses Enterprises ("M/WBE") certified pursuant to Article 15-A of the Executive Law, Service-Disabled Veteran-Owned Businesses ("SDVOB") certified pursuant to Article 17-B of the Executive Law, or commodities or technology products that are recycled or remanufactured, *in an amount not exceeding two hundred thousand dollars (\$200,000) without a formal competitive process.*

In such a case, three quotes should be obtained wherever practicable, and Contract Reporter advertising is advisable when time permits. The award of a discretionary purchase contract should be notified in the Contract Reporter. For more information on discretionary purchases see www.ogs.ny.gov.

3. Contract Reporter Exemptions

3.1. Reasons for Exemptions

Advertising a procurement in the Contract Reporter is generally required unless specific grounds exist that constitute a reason for exemption, A Contract Reporter exemption may be granted by the Chief Executive

Officer or Chief Financial Officer, only if any of the following circumstances can be demonstrated:

Sole Source. Only one source for the goods or services is available. Three examples of sole source procurements:

- (i) proprietary software compatible with RIOC operating systems that no one else offers;
- (ii) a printer's warranty requiring that only a toner cartridge supplied by the manufacturer could be used without voiding the warranty;
- (iii) a vendor has developed a proprietary system such as AVAC or the TRAM.

Single Source. The required goods or services are available from two or more vendors, but a particular vendor is preferable because of specific factors such as, without limitation, past experience with a particular issue; familiarity with RIOC's operations; experience with similar projects of RIOC, other agencies or at other levels of government; demonstrated expertise; or capacity and willingness to respond to the situation. An example would be an environmental consultant who worked on an EIS for a project and now a Supplemental EIS is required for the same project; many consultants could do the work, but the original consultant's familiarity with the project justifies selection as a single source.

Emergency Circumstances. Emergency circumstances exist when an urgent and unexpected situation arises which places public health or safety or the use or conservation of resources at risk and requires immediate action. Poor or late planning does not constitute an emergency. Contracts entered into as a result of an emergency situation should only cover the goods or services reasonably necessary to stabilize, ameliorate or remedy the situation. An example is an unforeseen hazardous condition at a building owned by RIOC: a contractor can be hired immediately to deal with the situation.

NOTE: Notwithstanding any Contract Reporter exemption that may be granted for any of the reasons set forth above, a reasonable attempt should be made wherever practicable to solicit at least three competitive bids, with written confirmation of the bids furnished within a reasonable time and maintained in the contract file. Also, any sole or single source contract awarded for the amount *equal to or greater than \$50,000* should be posted in the Contract Reporter (Economic Development Law, §143 (4)).

3.2. Authorization for Exemptions

RIOC must obtain a written Contract Reporter exemption authorization. The process of requesting such exemptions is described in/covered by *RIOC Standard Operating Procedures* pursuant to requirements established in Article 4-C of the Economic Development Law. Note that even if a Contract Reporter exemption is granted, compliance with SFL § 139-j and 139-k and State Tax Law § 5-a must still be satisfied (see Section 8.1).

At the time RIOC enters into a contract with a single or sole source provider for an amount *equal to or greater than \$50,000*, RIOC shall submit an announcement of the contract for inclusion in the Contract Reporter, and shall specify the recipient of the contract.

If the **proposed contract amount is equal to or greater than \$175,000**, or will last more than one year, the exemption authorization should be obtained before RIOC Board's approval.

4. Competitive Solicitation

The competitive solicitation process is described in detail/covered by *RIOC Standard Operating Procedures*.

- a) Project Manager prepares solicitation documents, forwards to Chief Executive Officer, Chief Operating Officer and Chief Financial Officer for their information and to Director of Procurement for review. Following review, Director of Procurement posts to Contract Reporter with a minimum of 15 business days for response with a corresponding posting of the solicitation on RIOC's website.
- b) When established bid due date has arrived, Director of Procurement sets up and conducts a bid

opening (see Section 9.2 for additional information on *Bid Openings* and *Public Works* contracts). Director of Procurement distributes package of pertinent materials for staff review and selection.

- c) After a vendor is selected, staff must obtain Board approval, where proposed contract amount is equal to or greater than \$175,000, or will last more than one year.

5. Advertising

Director of Procurement or his designee will review all solicitations and advertise using the various vehicles to publish procurement opportunity, including Requests for Proposals ("RFPs"), Requests for Statements of Qualifications ("RFQs") and Requests For Expression of Interest ("RFEIs") (See Section 7: Types of Solicitation).

6. Contents of ANY Procurement Solicitation

Whether the procurement is formal (such as an RFP, RFQ or RFEI) or informal (such as procurement for less than \$50,000, or a Discretionary Purchase from an M/WBE or SDVOB for up to \$200,000) the same basic information should be included in the solicitation:

- a. What goods are being sought or what scope of services is desired;
- b. What the length ("term") of the resultant contract will be;
- c. What criteria will be used in evaluating bids, and how those criteria are weighted? For example, price, bidders' expertise, past history of government contracts, references/testimonials;
- d. Where known, the maximum price that RIOC is prepared to pay for the goods or services;
- e. A schedule of relevant dates (When bid is due, when questions may be asked or briefing meetings held, etc);
- f. RIOC's insurance requirements;
- g. Minority and Women-Owned Business Enterprise and Service-Disabled Veteran-Owned Business participation goals (M/WBE and SDVOB);
- h. Disclosure to bidders that they must be able to demonstrate that they are responsible bidders, in good standing under the laws of New York and capable of fulfilling the requirements of the contract, and untainted by past non-performance or criminality;
- i. A copy of the contract that the successful vendor will be expected to agree to
- j. Vendor Responsibility Questionnaire ("VRQ") (See Sections 8.3 and 9.4);
- k. Encouragement of use of New York State businesses as sub-contractors or suppliers (See Section 8.6).

7. Types of Solicitations

7.1. General

There are a number of procurement vehicles available, including Request for Proposals ("RFP"), Invitation to Bid ("ITB"), Request for Statements of Qualifications ("RFQ") and, rarely, Requests for Expressions of Interest ("RFEI"). When selecting among these various approaches, the determining factors are:

- a. The importance of price or cost as a component in the review of incoming bids or proposals; and
- b. The ability to define specifications for goods or services being acquired, or to obtain those specifications from potential vendors (where the RFEI may be useful).

Generally, contracts for goods are to be awarded on the basis of "lowest price" and contracts for services are to be awarded on the basis of "best value" among responsive and responsible vendors. "Best value" is the basis for awarding service and technology contracts to the vendor that optimizes quality, cost and efficiency, among responsive and responsible vendors. The basis for a "best value" contract award must

be, wherever possible, quantifiable. However, all procurement solicitations issued by RIOC are to be guided by the same basic principles:

- **Clarity:** Procurement documents should clearly convey to vendors what it is RIOC wants to buy;
- **Fairness:** No vendor should be advantaged over another. All information concerning the solicitation shall be conveyed in writing to all vendors participating in the process, including but not limited to process rules and evaluation criteria;
- **Openness:** All relevant vendors should have an equal opportunity to respond to the offering.
- **Disclosure of Selection Criteria:** The criteria for awards should be developed before bids/proposals are received. Vendors should know generally the basis upon which their offers are being judged. Note that if cost is weighted below 20%, a written justification for such weighting should be prepared and included in the Procurement record;
- **Efficiency:** The process should be efficient, fair and able to withstand public scrutiny.

7.2. Requests for Proposals ("RFP")

RFP solicitations may range from relatively uncomplicated procurements to highly complex, long term efforts involving the significant commitment of both RIOC and vendor resources.

RFPs follow a common format, focusing on a description of tasks including, but not limited to:

- Description of program objectives and background;
- Scope of services to be provided;
- Detailed requirements or specifications (required qualifications of vendors, "what" is needed and "how" services should be provided). Note that the terms of the RFP may not be knowingly tailored to favor a particular vendor.

7.3. Requests for Statements of Qualification ("RFQ")

RFQ's are appropriate for retention of qualified pools of contractors to provide defined types or scopes of services (and, rarely, goods) required by RIOC on a regular or semi-regular basis as the need arises; or to select professional services to be rendered at pre-established rates. Competitive establishment of a pool or list of pre-qualified vendors is appropriate, for example, in the case of contractors or property appraisers. If RIOC has established a list of pre-qualified contractors, unless services will be rendered by all qualified vendors at rates not to exceed a preset maximum, three quotes should be obtained from vendors on the list, and/or from vendors known to RIOC outside the list.

7.4. Requests for Expressions of Interest ("RFEI")

RFEIs are generally appropriate when RIOC does not know the precise scope of services or goods required, and wishes to obtain this information from prospective vendors. An example would be a proposal for adaptive re-use of RIOC property, where the re-use is likely to be dependent on the prospective vendors' needs or ideas.

8. Compliance with Laws

8.1. Compliance with State Finance Law § 139-j and 139-k (Lobbying)

State Finance Law ("SFL") § 139-j and 139-k apply to all Procurement Contracts over \$15,000, regardless of whether the contract was competitively bid.

Among other things, SFL § 139-j and 139-k: (i) govern permissible communications between potential vendors, and staff of RIOC, its subsidiaries, or other involved governmental entities during the procurement process; (ii) require the disclosure of such communications, as well as prior determinations of vendor non-responsibility; and (iii) establish sanctions for knowing and willful violations of such

provisions, including disqualification from eligibility for an award of any contract.

Specifically, SFL § 139-j and 139-k require that only permitted RIOC and subsidiary contact person(s) identified in solicitation materials may communicate with potential bidders regarding the solicitation, from the issuance of the earliest written notice of a request for proposal through the final award and approval of any resulting contract. This period is defined by law as the "Restricted Period."

SFL § 139-j (6) (b) also requires potential vendors to complete the Offerer's Affirmation of Understanding and Agreement to comply with RIOC's procedures relating to permissible contacts. This written affirmation is deemed to apply to any amendments to a procurement submitted by RIOC after an initial affirmation is received with an initial bid.

SFL § 139-k governs the disclosure of prior non-responsibility determinations by potential vendors. SFL § 139-k (5) requires potential vendors to certify that the information they provide to RIOC for consideration in its determination of vendor responsibility is true and accurate. Therefore, all prospective vendors must complete and submit two forms mandated by SFL §§ 139-j and 139-k as part of their proposals: 1) the Offerer's Affirmation of Understanding and Agreement; and 2) the Offerer's Disclosure of Prior Non-Responsibility Determinations.

When contacted during the Restricted Period, RIOC staff must obtain the following information: the name, address, and telephone number, place of principal employment and occupation of the person or organization making the contact. Further, RIOC staff must inquire whether the person or organization making the contact was the offerer or retained, employed or designated by the offerer. All such recorded contacts must be included in the procurement record for the procurement contract.

In addition, RIOC staff must record any contacts that reasonably appear to be an attempt to influence the procurement process as well as contacts with staff members other than the designated contact person(s) during the Restricted Period of procurement. However, SFL § 139-j and 139-k do not prohibit an offerer from communicating with a member of the state legislature or legislative staff about a government procurement, provided such member of the state legislature or legislative staff is acting in his or her official capacity. If a vendor is found to have knowingly and willfully violated the State Finance Law provisions, that prospective vendor and its subsidiaries, related or successor entities will be determined to be a non-responsible vendor, and will not be awarded any contract issued pursuant to the solicitation. Two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State government procurement contract.

For further guidance, RIOC staff engaged in the procurement process should review RIOC's policy regarding permissible lobbying contacts, and the required language for solicitations by RIOC to ensure compliance with SFL § 139-j and 139-k.

Note that, once a recommended vendor has been selected after compliance with the competitive bidding process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the designated contact person, although it is good practice to have the contact person present. However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such. For example: an RIOC employee who is in the process of negotiating the terms of a land development deal which the Board has not approved, receives a call from an outside person saying that the vendor should get more development land because the vendor has a wonderful track record. Such a call constitutes lobbying and must be reported as such. The caller should be informed that the call will be reported, and asked to communicate directly with the designated contact person in the future.

8.2. [Compliance with State Tax Law § 5-a \(Sales Tax Registration\)](#)

State Tax Law § 5-a prohibits RIOC from approving any contract valued at more than \$100,000 with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the four quarters preceding the proposed contract date, and is not registered with the Department of Taxation and Finance ("DTF") for sales and compensating use tax purposes.

Accordingly, all respondents to a solicitation where the amount of the contract is expected to exceed \$100,000 must include in their responses a properly completed Form ST-220-CA. However, if a vendor is not registered with DTF due to a lack of sales of over \$300,000 within the relevant period, the vendor must submit an affidavit so certifying. Note also that § 5-a does not apply to contracts for architectural, engineering or surveying services. If in doubt, contact the RIOC legal department after having reviewed DTF Publication 223.

Failure to include a properly completed form ST-220-CA or affidavit may be a basis for considering any such response incomplete. However, the vendor or respondent should be given an opportunity to cure such failure, because some agencies do not require the form until contract signing, and vendors may not realize that RIOC practice is different. Only the primary respondent vendor completes Form ST-220-CA, but Schedule A to Form ST 220-CA requires detailed information from the vendor's sub-contractors, such as tax ID number, etc. If applicable, certificates of authority evidencing registration with DTF for sales tax purposes must be attached by the prime vendor and all the sub-contractors.

Further, in accordance with the requirements of § 5-a, any contract resulting from a solicitation will require periodic updating of the certifications contained in Form ST-220-CA.

8.3. [Vendor Responsibility](#)

Per Article XI §163 of State Finance Law, agencies shall make a determination of responsibility of the proposed contractor prior to making an award of contract. All vendors must be found to be "responsible", and remain so through the term of the contract. While not governed by State Finance Law § 163, RIOC adheres to this section provisions as best practices and utilizes Vendors Responsibility Questionnaire. See Section 9.4 below for further guidance on determination of vendor responsibility.

8.4. [Compliance with Executive Law Article 15-A: Participation by Minority Group Members and Women with Respect to State Contracts](#)

All Procurement Contracts must comply with the requirements of Executive Law Article 15-A, which promotes employment and business opportunities for minorities and women on State contracts "to encourage and assist State agencies in their efforts to increase participation by minority and women-owned business enterprises ("M/WBEs") on State contracts so as to facilitate the award of a fair share of such contracts to M/WBEs."

Where practical, feasible and appropriate, RIOC shall promote and assist participation by M/WBEs in the selection and award of all contracts. Such M/WBE participation shall be documented by Director of Procurement and included in the quarterly and annual reports made to the Board.

8.5. [Compliance with Executive Law Article 17-B: Participation by Service-Disabled Veterans with Respect to State Contracts](#)

All Procurement Contracts must also comply with the requirements of Executive Law Article 17-B, which acknowledges that Service-Disabled Veteran-Owned Businesses ("SDVOBs") strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, respondents for this contract for commodities, services or technology are strongly encouraged and expected to consider SDVOBs in the fulfillment of the

requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles

Where practical, feasible and appropriate, RIOC shall promote and assist participation by SDVOBs in the selection and award of all contracts. Such SDVOB participation shall be documented by Director of Procurement and included in the quarterly and annual reports made to the Board.

8.6. Compliance with Iran Divestment Act of 2012

Every bid or proposal made to RIOC pursuant to a competitive solicitation as provided in these Guidelines must contain the following statement, signed by the bidder or respondent and affirmed as true under penalty of perjury: " By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by OGS. No bid that fails to certify compliance with this requirement may be accepted as responsive, unless the bidder includes a statement in compliance with the Iran Divestment Act (contact the Legal Department for guidance in such a case).

8.7. Encouragement of Use of New York Businesses as Contractors and Suppliers.

In accordance with the State Finance Law Section 139(i), RIOC shall promote the participation by New York State Business Enterprises in Procurement Contracts. In addition, all vendors who anticipate using sub-contractors or suppliers to fulfill procurement contracts, must be encouraged (but not required) to use New York State businesses.

8.8. Project Sunlight

Project Sunlight is an important component of the Public Integrity Reform Act of 2011. Under this law, RIOC is required to cooperate with the Office of General Services (OGS) and identify in a database developed by OGS all individuals, firms or other entities (other than State or local governmental agencies) that appear before such entity on behalf of themselves or in a representative capacity on behalf of a client or customer for any of various specified purposes. Project Sunlight's reporting requirement for procurement appearances applies to those appearances that are for the purpose of procuring a State contract, irrespective of whether there is a governmental procurement planned. Thus, reporting is required for appearances relating to State contracts for which a Restricted Period under the Procurement Lobbying Law has not been established and without regard to whether a governmental procurement is anticipated. Appearances during the Restricted Period-whether they are bid clarification meetings or bid interviews or any other permissible contact under the State Finance Law do not need to be reported. Appearances following the award of the contract do not need to be reported.

8.9. Publication on RIOC Website

Competitive solicitations must be made available on the RIOC website after advertisement in the NYS Contract Reporter. This website is also the appropriate place to post Questions and Answers regarding the procurement. (See Section 9: Contract Reporter Advertising Process).

8.10. Standard-Form Attachments

Procurement Contracts, which includes amendments to existing contracts, should include RIOC's standard forms, including as appropriate RIOC's Standard Contract as well as further required contract forms (Reference forms; Sample Addendum Receipt; ST 220 – Contractor Certification; EO 127 and EO 177

Certifications; RIOC's Non-Discrimination and Affirmative Action Provisions and Schedule of Minority/Women Business Participation; Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance; SFL § 139-j and 139-k and State Tax Law § 5-a (or affidavit of non-applicability); satisfactory evidence of insurance requirements having been met; ST 220-CA where applicable; and RIOC's Vendors Responsibility Questionnaire.

9. Contract Reporter Advertising Process

As stated above, RIOC must advertise in the New York State Contract Reporter all contracts for the acquisition of goods and services of \$50,000 or more, unless an exemption is granted. Director of Procurement or his/her designee accesses the online system and places the advertisement.

The minimum time for vendors to respond to a Contract Reporter solicitation is 15 business days (i.e., Saturdays, Sundays and legal holidays are excluded). View the Contract Reporter's daily publication schedule.

Where practicable, staff members responsible for a proposed Procurement Contract should make reasonable efforts to identify potential vendors in addition to those identified through the Contract Reporter. This may be done by obtaining referrals from other governmental entities that may have similar requirements, reviewing reference directories, mailing solicitation materials to industry associations and/or known vendors and mailing to lists of appropriate M/WBEs and SDVOBs maintained by ESD and OGS.

9.1. Selection Criteria

Written selection criteria shall generally be established for each proposed Procurement Contract and shall be included in any written solicitation materials. The relative weighting of the selection criteria should be set out in the RFP wherever practicable and, in the absence of written weighting, each criterion shall be deemed to have the same weight.

The selection criteria shall generally include price as an important factor to be considered in the selection process; however many RIOC procurements are based on "Best Value," which allows for factors other than price to be taken into account. Such factors commonly include the quality of goods and services, the experience of the vendor and specific expertise with respect to the goods or services to be supplied. See also Section 7.1 above if price is weighted at less than 20%.

9.2. Bid Opening Procedures

All proposals should be received at the main office, and immediately should be stamped with the date and time of receipt. **DO NOT OPEN ANY BID PACKAGES FOR ANY REASON BEFORE THE FORMAL BID OPENING.** Depending on the type of contract, RIOC staff members representing Procurement, Finance, Legal, Engineering and relevant department should be present at bid openings in person or by teleconference. Bids shall be opened by Director of Procurement or his/her designee, and the time and date of receipt shall be entered into the Bid Log, which must be signed by all staff members present. Teleconference participants must confirm their presence by email to the Procurements Manager. The Bid Log shall also record the presence of SFL §139j-k and ST-220 forms in the bid.

A Public Bid Opening is required for Public Works contract solicitations, pursuant to State Finance Law §144. This section generally covers bids for construction work on public projects, and may include preparatory work such as demolition, asbestos abatement and the like. RIOC must be a party to the contract, which must involve the use of laborers, mechanics or workers (not, for example, architects and engineers). The definition of a "Public Work" is more a matter of art than law: if in doubt as to whether the contract is for Public Work, contact the Legal Department for guidance.

9.3. Bid Evaluation and Vendor Selection

The initiating Department Head should establish, prior to bid opening, a team of at least three RIOC staff members with relevant knowledge and experience of the goods and/or services being procured. In some cases, one or more RIOC's consultants may join the review team, where those persons have specific knowledge of the procurement subject, or a specific role to play in the administration of the contract with the successful bidder. If non-RIOC staff is included in the review team, the team must be expanded in number such that a majority will always be RIOC staff members.

Analysis of the proposals and/or bids submitted and the award of the contract shall be documented in reasonable detail. Award to anyone other than the low bidder must include in the documentation the reason the low bidder was not selected.

In reviewing bids, all members of the team must complete and sign scoring sheets that rate each bidder according to the selection criteria and weighting set out in the RFP. Scoring sheets must not include anything other than numerical ratings (i.e., no comments/opinions/notes, etc). Original scoring sheets must be signed and retained by Director of Procurement as part of the Procurement Record. Director of Procurement must aggregate and summarize the scoring and provide such computation to the Comptroller and Chief Financial Officer for review and approval.

9.4. Determination of Vendor Responsibility -"FLIP Review"

Pursuant to State Finance Law § 163, agencies must determine that a vendor or respondent is a responsible contractor, prior to approving the award of a contract. While not governed by State Finance Law § 163, RIOC adheres to this section provisions as best practices. RIOC conducts an affirmative review of the responsibility of any vendor to whom it proposes to make a contract award. "Responsibility" means the financial ability, legal capacity, integrity, and past performance of a business entity and as such terms have been interpreted relative to public procurements. Director of Procurement should ensure that all vendors are "responsible."

Vendor responsibility is generally accomplished by "FLIP" review. FLIP review involves assessment of four factors: (i) Financial and organizational capacity; (ii) Legal authority to do business in the state; (iii) Integrity of the owners/officers/principals; and (iv) Past performance on prior government contracts.

RIOC uses Vendors Responsibility Questionnaire ("VRQ"), which is based on the Office of the State Controller VENDREP form intended for state agencies. Note that FLIP review is not needed for procurements from the OGS Centralized Contracts list

If a vendor is considered to be non-responsible, steps must be taken to afford the vendor due process rights, including an opportunity to explain its position in writing and, in some cases, at a meeting. Consult the RIOC Legal Department in such cases. For more information on vendor responsibility, see Best Practices on the OGS website at: www.ogs.state.ny.us/procurecounc/pdfdoc/BestPractice.pdf

9.5. Procurement Record

Director of Procurement or his/her designee shall be responsible for creating and maintaining a record of the procurement process. Such record shall contain documentation related to the procurement process, any competitive solicitation exemption, proposals and/or bids received, scoring sheets, vendor responsibility documentation and other documents prepared or used by the bid reviewers in their vendor selection process. Note that final scoring sheets must be sent to Director of Procurement before a contract is executed. Director of Procurement must aggregate and summarize the scoring and provide such computation to the Comptroller and Chief Financial Officer for review and approval.

10. Contract Approval

Procurement Contracts in amounts less than \$175,000 that will be completed within one year must be approved by the Chief Executive Officer or Chief Financial Officer or Chief Operating Officer or General Counsel.

Procurement Contracts equal to or greater than \$175,000, as well as contracts for any amount involving personal services to be rendered over a period in excess of one year, must be approved by the RIOC Board. However, *warranty and product maintenance/support/lease contracts (including but not limited to auto leases)* are not considered personal services and do not require approval by the Board unless the amount of such contract is over \$200,000 in aggregate through the life of the contract.

10.1. Board Materials

The respective Department Head or his/her designee writes a memorandum to the Chief Executive Officer/Board, explaining the need for the contract.

The Board materials must set out:

- the need for goods and services;
- a brief description of the goods or services needed;
- the expected maximum cost of the proposed goods or services;
- the selection process used to determine an award based on best value, or where not quantifiable, the justification which demonstrates the best value will be achieved; and
- the funding source.

10.2. RIOC Contract and Amendment Approval

Contracts in amounts under \$175,000 must be approved by Chief Executive Officer or Chief Financial Officer or General Counsel or his/her designee.

Contracts that are: (i) in amounts equal to or greater than \$175,000; or (ii) contracts for any amount involving services to be rendered over a period in excess of one year must be approved by the RIOC's Board.

If staff anticipates that a contract may need to be extended beyond one year, ensure that Board approval is requested and that the materials and resolution specifically permit an extension of the contract. Once Board approval is obtained, the contract with the vendor must contain a clause that specifically permits extension. If the contract does not contain such a clause, and the contract needs to be extended, Contract Reporter advertising is required unless an exemption is granted.

Contracts for goods to be provided or services to be rendered over a period in excess of one year, regardless of the amount of the contract, which therefore must have been approved by the Board, must in addition be reviewed and approved annually by RIOC's Board. Director of Procurement must provide an annual report setting forth the status of all continuing goods and/or services contracts, together with justification for the continuance of such contracts for the next year. The status reports will also be part of the annual budget and spending review process for all existing RIOC budgets. The annual status reports will thus serve to clarify the need to continue existing multi-year goods and/or service provider contracts.

Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head or Project Manager it is essential that work on the contract be commenced before the formal contract documents have been approved, the RIOC Chief Executive Officer, General Counsel, Chief Operating Officer or Chief Financial Officer may issue a letter authorizing a contractor to commence work pending completion and execution of formal contract documents ("*Notice to Proceed*"), provided that:

- a) The contract is not subject to Office of the State Comptroller ("OSC") approval (See Section 11.4);

and

- b) the authorization contained in the Notice to Proceed does not exceed \$175,000; and
- c) the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of two of the following: RIOC Chief Executive Officer, General Counsel, Chief Operating Officer or Chief Financial Officer
- d) all insurance requirements have been met.

Amendments to existing contracts follow the same process as new contracts, i.e., the amendment needs to be advertised in the New York State Contract Reporter or exempted. The same documents, such as justification memo/contract status report, commitment request form and/or standard amendment form must be generated.

If the proposed amendment will involve a new Contract Reporter advertisement or other solicitation, the requirements of State Finance Law §139-j and 139-k and State Tax Law § 5-a will apply, and in any case, new certifications may be required. Note that an amendment to an existing contract that causes the aggregate amount of the contract to exceed \$1 million may be subject to OSC approval, regardless of the amount of the amendment and source of funds.

Contract amendments that increase the contract amount to \$175,000 or more must be approved by the RIOC's Board. Amendments for less than 10% of the original contract amount (or the contract amount as subsequently approved by the Board) may be executed by the RIOC Chief Executive Officer or Chief Financial Officer without further Board approval, unless the amendment increases the contract to an amount above \$175,000 and Board's approval has not been previously obtained.

If any such proposed amendment will increase the term of the contract to more than one year, Contract Reporter advertising is necessary unless, as discussed in paragraph above, the original contract contained a clause specifically permitting extension.

In the case of contracts for more than \$1 million, where the initiator or Director of Procurement anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount, Board approval should be sought from the outset for amendment of the contract up to 10% of the amount approved, to be executed without further Board approval by the Chief Executive Officer and the Chief Financial Officer of the corporation. Note that such an amendment may require OSC review and approval. If in doubt, consult the Legal Department.

11. Steps after Contract Approval Is Obtained

11.1. Contract Package

- a) The project manager completes the required information on the Contract Execution Checklist
- b) The project manager completes the Standard Form Contract with the relevant attachments or Modification of Contract.

The provisions and the requirements of the proposed contract must be specific and stated in clear and unambiguous terms so they are fully understood by the contracting parties. It is important that the contract clearly specify what is expected of both the contractor and RIOC, and the method of payment to the contractor. The more clear and specific the contract, the easier it will be to monitor.

The terms of the contract should include, but not be limited to:

- the scope and purpose of the contract;
- the description of the services to be performed;

- the location where the work is to be performed;
 - the standards to be used to measure performance (e.g. units of services, number and nature of clients served, target dates, etc.);
 - the level of expertise that is required to perform the tasks, the cost and the method payment of the contract;
 - the starting date and the contract period;
 - the finished product or the services to be delivered;
 - record-keeping and reporting requirements, including a statement that RIOC and any relevant State agency has the right to audit the contractor's records;
- c) The project manager submits the Contract Execution Checklist and Standard Form Contract with relevant attachments and all appropriate insurance certificates, as required by RIOC, to the Legal Department for compliance review and approval. When approved, the Legal Department sends the contract to vendors. After receipt of three (3) signed sets from the vendor, the Legal Department sends all three sets to the Chief Executive Officer for signature. The Legal Department sends one original copy of the fully-executed contract to the vendor. Copies are distributed to Finance, Procurement, Capital Planning and Projects and other relevant departments.

11.2. Contract Reporter Award Notification

If a contract is awarded after a Contract Reporter Solicitation, the award, along with the Schedule of Minority/Women Business Participation, must be posted on the Contract Reporter system. A contract is considered awarded when it is executed (signed) by all parties. This posting will be done by the Procurement Manager.

11.3. Extension/Amendment of Contracts

If a Procurement Contract is entered into after a Contract Reporter solicitation, the contract and solicitation can provide that there may be an extension of the contract or amendment to the scope of work. If so, then extensions and/or amendments do not need to be advertised in the Contract Reporter again. However, if the contract requires approval by the RIOC Board, the possibility of extension or amendment must be included in the original Board materials and Resolution. When in doubt, provide for extension or amendment to minimize future problems.

11.4. OSC Post-Contract Approval of \$1,000,000+ Contracts

Under Public Authorities Law § 2879-a (effective March 1, 2010), proposed contracts in excess of one million dollars that either: (i) are to be paid for in whole or in part by state appropriations; or (ii) are not to be awarded after a competitive process (regardless of the funding source), must be approved by the Office of the State Comptroller ("OSC") after the contract is signed. If § 2879-a applies and approval by OSC has not been obtained, the signed contract "shall not be a valid enforceable contract." OSC has issued final regulations implementing this law, and OSC approval shall be deemed part of these Guidelines.

The contracts for the sale of real property for an amount over \$1 million are covered by the Property Disposition Guidelines and are not subject to OSC review and approval under Public Authorities Law § 2879-a.

12. Monitoring of Procurement Contracts

Performance of Procurement Contracts must be monitored by Director of Procurement and the Project Manager to ensure that the scope of work or services to be provided are being/have been performed, that use of RIOC personnel, supplies and facilities is documented, and that the established starting and completion dates for major components of the contract are being/have been met.

RIOC employees assigned the responsibility of monitoring the work should be familiar with the type of

work being performed and with the specific terms of the contract.

The frequency and manner in which the vendor's performance will be monitored should be clearly stated to the vendor and directly related to the terms of the contract.

Written documentation pertaining to vendor performance, such as progress reports, site visit reports, payment and expenditure data, memoranda of verbal discussions, and written correspondence, should be maintained and reviewed by the initiating Department.

Periodic visits to the work sites should be made where appropriate to review work in progress and work completed. Site visit reports should be completed and include the observations of pertinent matters, such as the number and type of persons employed by the vendor, adequacy of the facilities and equipment, and quality of performance, including any deficiencies in the performance of the work, which may have an impact on satisfactory completion of the project.

The evaluation of the vendor's performance should take into consideration the quantity and quality of the work performed, the timeliness of submission of contract deliverables, the adequacy of cost and performance records and other supporting documentation, and whether the extent of performance, to date, is commensurate with the amount the contractor has been paid.

Performance that is below expectations or established standards shall be reported to RIOC management immediately. All deficiency reports should be specific and in writing. Management should review deficiency reports and take appropriate action, which may include termination of a contract.

All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head. No payment should be made unless the work is satisfactory and in accordance with the terms of the contract. Approval on the Payment Authorization form attests to this.

13. Procurement Contracts Involving Former Officers of RIOC

RIOC shall not enter into Procurement Contracts with its former officers or employees, or with firms employing such officers or employees, except as permitted by applicable provisions of law and by RIOC's Code of Ethics.

14. Implementation of These Guidelines

RIOC's Legal Department, in conjunction with the Chief Financial Officer, shall be responsible for:

- a) Preparing for approval by the CEO such supplemental procedures as may be required to effectively implement these Guidelines.
- b) Preparing proposed amendments to the Guidelines for approval by the CEO and the RIOC Board of Directors when and as required.

15. Reporting

15.1. Quarterly Reports

Director of Procurement shall prepare for presentation to RIOC's Board, quarterly reports of new Procurement Contracts and required Schedules of M/WBE and SDVOB Participation. For each Procurement Contract, the report shall include the contract amount, reason for award, initial scope of services and the selection process used. Such reports shall include information related to amendments approved on contracts during the reporting period.

15.2. Annual Reports

Annually, Director of Procurement shall prepare for RIOC's Board review a report on Procurement

Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts

Contracts as of the end of each fiscal year, summarizing procurement activity by RIOC for the period of the report, including a listing of all contracts entered into, the selection process used to select vendors, the status of existing Procurement Contracts and required Schedules of M/WBE and SDVOB Participation. Director of Procurement shall also prepare, on an annual basis, a report for submission to:

- a) The Division of Budget;
- b) The Office of State Comptroller;
- c) The Senate Finance Committee;
- d) The Assembly Ways and Means Committee;
- e) Members of the public (upon receipt of reasonable requests therefore); and

The reports shall include these Guidelines, any amendments thereto, and an explanation of the amendments.

16. Effect on Awarded Contracts

Nothing contained in these 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, these Guidelines. These Guidelines reflect best and customary practice, but are not intended to be rules of law. Note, however, that certain contracts may not be "valid or enforceable" without OSC approval.

Dated: May 9, 2019