

## **Article I. Purpose and Applicability.**

These Procurement Contract Guidelines ("Guidelines"), adopted pursuant to Public Authorities Law Sections 2824 and 2872, set forth the operative policies of the Albany Port District Commission ("APDC") and instructions to its officers and employees regarding the use, awarding, monitoring and reporting of Procurement Contracts.

These Guidelines apply to any Procurement Contract entered into pursuant to the provisions of Section 2824 of the NYS Public Authorities Law.

The APDC reserves the right to contract with other public corporations, state agencies and the federal government without being bound to these procurement guidelines.

The APDC is subject to the Procurement Lobbying Act, Section 139- j of NYS Finance Law, which requires the authority to designate a person or persons to serve as the authorized contact on a specific procurement.

The APDC is subject to Article 15-A of the NYS Executive Law with respect to Minority and Women Owned Business Enterprise ("MWBE") and Article 3 of the NYS Veterans' Services Law with respect to Service-Disabled Veteran-Owned Business Enterprise ("SDVOB") requirements in the procurement of contracts.

The APDC is required to develop, adopt and annually review comprehensive guidelines that govern the APDC's policies and instructions concerning procurement activities. These procurement guidelines will help to ensure that funds are used in a financially sound manner, enable the APDC to acquire maximum quality at the lowest possible cost and guard against favoritism, fraud and corruption.

## **Article II. 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.

## **Article III. Definitions.**

- **Best Value:** basis for awarding contracts to the bidder who optimizes quality, cost and efficiency, among responsive and responsible bidders.
- **Board:** shall mean the Albany Port District Commission Board of Commissioners.
- **Commodities:** standard articles of commerce in the form of material goods, supplies, products or similar items.
- **Cooperative Procurement:** the action taken when two or more public procurement entities combine their requirements to obtain advantages of volume purchases, including administrative savings and other benefits.

- **Cost:** as distinguished from “price”. Cost includes conversion costs, life-cycle costs and encompasses “price” which is the amount charged by the vendor for the commodity or service.
- **Lowest Price:** basis for awarding all commodity contracts among responsive and responsible bidders.
- **Piggybacking:** where one government entity extends the pricing and terms of their contract to others. It must be competitively awarded and will include language allowing other governmental entities (authorities) to utilize the contract.
- **Procurement Contract:** any written agreement for the acquisition of commodities and /or services.
- **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 public during and after the procurement.
- **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.
- **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.
- **Responsive:** term applies to a bidder meeting the minimum qualifications or requirements as prescribed in a solicitation document.
- **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 a combination thereof).

#### **Article IV. Responsibility for Procurement Contracts.**

The Chief Executive Officer, or his duly appointed designee, has the overall day-to-day responsibility and oversight regarding the awarding and monitoring of procurement contracts.

## **Article 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 offeror/bidder during the procurement process for all contracts involving an annual expenditure greater than \$15,000. An offeror/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 an “APDC Record of Contact” form and placing it in the relevant Procurement Record.

The APDC must also make a determination of the responsibility of offeror/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 offeror/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 an RFP:

- 1) The APDC must obtain from all offerors 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 offerors 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 offeror 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 offeror in accordance with the written notification terms of this contract.*

## Article VI. Thresholds and Procedures

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 displayed in the chart below. 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.

REQUIRED PROCEDURE	COMPETITIVE PROCUREMENTS Commodities and Non-Professional Services	NON-COMPETITIVE PROCUREMENTS Include: Preferred Source State Contract Sole or Single Source Piggyback Contracts Emergency Professional Services WBE/MBE/SDVOB NOT exceeding \$200,000
No Quotes Required	Under \$1,000 Preferred Source and State Contract vendors shall be used first when available	* Non-Competitive Procurement thresholds shall not preclude the APDC employees from performing their fiduciary duty of seeking the most cost-efficient procurements. Equitable distribution among vendors and fair price determinations should be made at all times. *All Non-Competitive Procurements shall have written documentation attached with justification for any non-competitive category selections.
3 Phone Quotes	\$1,000- \$4,999	n/a
3 Written Quotes	\$5,000-\$24,999 for commodities and services \$5,000-\$49,999 for construction *\$15,000 or more shall be coordinated through the Procurement Office via a Request For Quote (RFQ).	n/a
RFP/RFB	\$25,000 or more for commodities and services \$50,000 or more for construction	*The applicability of a formal RFQ/RFP/RFB process for any professional service with an estimated cost reaching \$50,000 or more shall be reviewed and considered. *A discretionary bidding process may be used for WMBE/SDVOB procurements up to \$200,000. *A WMBE/SDVOB procurement over \$200,000 or more must use a formal competitive bidding process.
Requisition/PO to be approved by: 1.Procurement Coordinator 2.Chief Financial Officer 3.Chief Executive Officer	Any amount equal to or greater than \$1,000	Any amount equal to or greater than \$1,000
Board of Commissioners/ Resolution/Contract	1. Any amount equal to or greater than \$50,000 2. All service contracts over 1 year will be reviewed annually. 3. All Change Orders to existing contracts in an amount equal to or that will increase the contract total to \$50,000 or more.	

## Article VII. Waiver of Competition.

The APDC waives the use of the competitive procedures 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 of commodities and services available from Preferred Sources and the applicable procedures are maintained by the NYS Office of General Services at <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 Chief Executive Officer may determine that emergency procurements 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 \$50,000 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 SDVOBs. Competition may be waived in the case of New York Certified MWBEs and SDVOBs 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 products may be retained to continue maintenance of such products if the APDC determines that competition of such continued maintenance is not appropriate.
- 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 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; 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 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.

## **Article VIII- Request for Proposals (RFP) / Request for Bid (RFB) Procedures**

- 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 ensure competition, including any MWBE and SDVOB 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 VII of this document; 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) The RFP shall describe the required commodities or services, relevant completion dates or time requirements, bidder qualifications, MWBE and SDVOB 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 publicly opened at a designated time and place by a duly appointed APDC representative (s).
- 4) 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.
- 5) Any information concerning the solicitation or changes to the RFP must be communicated in writing to all bidders participating in the process.
- 6) 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.
- 7) 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 that is based on “Best Value”.
- 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.

## **Article IX- New York State Public Authority Advertising and Reporting Requirements**

1.) The procurement opportunities newsletter, commonly referred to as the Contract Reporter, is New York State's central source of bid opportunities for commodities, services (including construction services) and technology. The Contract Reporter contains individual procurement opportunities valued at \$50,000 or more from State agencies, public authorities, public benefit corporations and others (Economic Development Law §142).

On a quarterly basis, The APDC is required to report projected procurement opportunities in the amount of \$5,000 - \$50,000 in the Contract Reporter System.

In addition, The APDC will report projected procurements worth \$200,000 or more on a semi-annual basis (Economic Development Law §142(5)) in the Contract Reporter System.

The APDC is also required to notify the Commissioner of Economic Development of a procurement contract for goods or services from a foreign business if the amount of the contract is equal to or greater than \$1,000,000 (State Finance Law §139-i(2)(a)).

If the procurement will exceed \$50,000, the APDC shall not make a contract award unless: it has published the procurement opportunity in the Contract Reporter; has received a publishing exemption from the Office of the State Comptroller; or the contract falls under one of the exemptions outlined in Economic Development Law §144.

2.) The APDC is required to submit annual and quarterly contract reports through the New York State Contract System.

3.) The APDC is required under Public Authorities Law to prepare a publicly available report on an annual basis, summarizing procurement activity by the APDC. The APDC reports annually on all procurement transactions with a value over \$5,000 in the Public Authorities Reporting Information System (PARIS). Only contracts in the actual or estimated amount of more than \$5,000 and for at least one year in duration need be included.

## **Article X. Real Estate Transactions**

Please see the APDC Property Disposition Guidelines/Property Acquisition Policy for the appropriate procedures.

## **Article XI. Service Contracts**

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.

## **Article XII. Minority and Women Owned Business Enterprises.**

Minority and women-owned businesses shall be given full opportunity to compete in all types of Procurement Contracts. Pursuant to NYS Executive Law Article 15-A, the APDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned businesses (MWBES) in the performance of APDC contracts. The APDC advises all potential service providers that disadvantaged, minority and women-owned business enterprises will be afforded full opportunity to submit proposals in response to this notice and there will be no discrimination on the basis of race, creed, color, sex, national origin, disability or marital status in the award of the contract or any subcontract.

## **Article XIII. Service-Disabled Veteran Owned Businesses (SDVOB)**

NYS Veterans' Services Law Article 3 provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. The APDC recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of APDC contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, bidders are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of Procurement Contracts. Such participation may be as subcontractors, as protégés or in other partnering or supporting roles.

## **Article XIV. 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.

## **Article XV. 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.



## **Article XVI. 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.

Effective Date. These Guidelines shall be effective on August 28, 2023.