

# PROCUREMENT POLICY

## I. METHODS OF SOURCE SELECTION

Except as may be otherwise authorized or required by federal, New York State or New York City law, rules or regulations, all contracts of the Hudson Yards Development Corporation (“HYDC”) shall be awarded by competitive sealed bidding pursuant to Section (E) (Competitive Sealed Bidding), except as provided in:

- (A) Sole Source Procurement
- (B) Small Purchases
- (C) Emergency Procurements
- (D) Personal and Professional Services
- (F) Competitive Sealed Proposals
- (G) Contractors Recommended by Construction Manager
- (H) Use of Other Governmental Contracts

All decisions, determinations, and findings required to be made pursuant to this Procurement Policy shall be made in writing, with appropriate supporting documentation. All contracts awarded pursuant to this Procurement Policy shall require the authorization of HYDC’s Board of Directors, except small purchases pursuant to subparagraph A and emergency procurements pursuant to subparagraph C, where it is not practicable to obtain prior authorization.

**A. Small Purchases.** Notwithstanding anything to the contrary contained in this Article I, procurements for Small Purchases shall be governed only by this Section A.

1. “Small Purchase” means any procurement the value of which is less than \$100,000. Procurements shall not be artificially divided in order to qualify as Small Purchases.
2. For procurements, the value of which is \$20,000 or less, no competition is required. However, HYDC shall use reasonable efforts to determine that the price or fee is reasonable.
3. For procurements the value of which is greater than \$20,000, HYDC shall use reasonable efforts to obtain offers from at least three qualified persons or entities.
4. Small Purchase contracts awarded pursuant to this Section A shall not require the authorization of HYDC’s Board of Directors.

**B. Sole Source Procurement.** Notwithstanding anything to the contrary contained in this Article I, contracts for an amount greater than \$20,000 may only be awarded without competition upon specific authorization by HYDC's Board of Directors.

**C. Emergency Procurements.**

1. Notwithstanding anything to the contrary contained in this Article I, the President may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety or to property in which HYDC or the City of New York has an interest, or where required to avoid an interruption in HYDC operations.
2. Emergency procurements shall not be subject to the requirements or limitations of other Sections of this Article I, provided that
  - ▣ Emergency procurements shall be made with such competition as is practicable under the circumstances.
  - ▣ The scope and duration of emergency procurements shall be limited to the emergency circumstances.

**D. Personal and Professional Services.** Personal and professional services shall be procured as provided in this Section D, except as otherwise authorized in this Article I.

1. HYDC shall use reasonable efforts to obtain a minimum of three (3) proposals from qualified persons or entities for each personal or professional services contract. If a minimum of three proposals is not obtained, HYDC shall document the reasons therefore.
2. HYDC shall designate a selection committee, which may include persons who are not employees of HYDC, to review proposals received. The selection committee shall review all responsive proposals from responsible proposers. The selection committee may elect to interview and/or request additional information in connection with the evaluation of proposals. The selection committee shall rank the proposals based on quality, price, and qualifications to provide the requested services.
3. HYDC shall negotiate with the highest-ranked proposer for an agreement for the performance of the requested services on terms satisfactory to HYDC. If, despite good faith efforts, HYDC is unable to reach a satisfactory agreement with the highest-ranked proposer, it shall terminate such negotiations and enter into negotiations with the second-ranked proposer, and so on until an agreement is reached, provided that HYDC may elect, at any time, to withdraw the procurement.

**E. Competitive Sealed Bidding.** Contracts for an amount greater than the Small Purchase limit shall be awarded by competitive sealed bidding, except as otherwise provided in this Article I.

1. Invitation for Bids. An Invitation for Bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement.
2. Public Notice. Public notice of the Invitation for Bids shall be given by publication in the City Record a reasonable time prior to the date set forth therein for the opening of bids. HYDC may also publish such notice in other media.
3. Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, the name of each bidder and the bid security, if any, shall be recorded. The record and each bid shall be open to public inspection.
4. Bid Acceptance and Bid Evaluation. Bids may only be unconditionally accepted without alteration or correction on the part of the bidder except as authorized in this Section. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Any criteria that would affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used.
5. Correction or Withdrawal of Bids. Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids shall be permitted in instances in which the President finds that it is in HYDC's interest to do so. After bid opening, no changes in bid prices or other changes prejudicial to the interest of HYDC or fair competition shall be permitted.
6. Award. The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. Notwithstanding the foregoing, any or all bids may be rejected when HYDC reasonably deems it is in HYDC's best interest to do so.

**F. Competitive Sealed Proposals**

1. Conditions for Use. Contracts for an amount greater than the Small Purchase limit may be awarded by competitive sealed proposals only upon a determination by the President that it is not practicable or advantageous to use competitive sealed bidding. Grounds for such determination shall include, without limitation, that:
  - ┌ Specifications cannot be made sufficiently definite and certain to permit selection based on bid price or evaluated bid price alone; and/or

- └ Judgment is required in evaluating proposals; and/or
  - └ Evaluation of proposals requires a balancing of price, quality, and other factors.
2. Request for Proposals. Proposals shall be solicited through a Request for Proposals.
  3. Public Notice. Public notice of the Request for Proposals shall be given by publication in the City Record a reasonable time prior to the date set forth therein for the submission of proposals. HYDC may also publish such notice in other media.
  4. Receipt of Proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A Register of Proposals shall be prepared and shall be open for public inspection after contract award.
  5. Evaluation Factors. Proposals shall be evaluated based on the quality of the proposals, based on the relative importance of such criteria as capacity to execute the proposal, relevant expertise or experience, and price or cost.
  6. Discussion with Responsible Offerors and Revisions to Proposals. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
  7. Award. Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to HYDC in accordance with subparagraph (5) above.

**G. Contractors Recommended by Construction Manager**

When HYDC has retained a construction manager that works on a construction project or that performs facilities management services, any contract for construction or construction-related goods or services or facilities management services, as applicable (including in either case, without limitation, contracts for fixtures, furnishings and equipment) may be entered into pursuant to the procedure set forth in this Section G in lieu of the other procurement procedures set forth in this Article I.

1. Selection of Contractors. If HYDC elects to enter into a contract pursuant to the procedure set forth in this Section G, HYDC's construction manager shall recommend to HYDC a minimum of five potential contractors for each contract, or such lesser number as HYDC's President shall determine based upon the circumstances of the relevant contract(s), but in no event fewer than three. HYDC shall review such list of potential contractors and determine which of them HYDC considers to be appropriate. Proposal packages will be sent by the construction manager or HYDC to all such contractors. The construction manager and HYDC shall review the proposals received from responding contractors, and the construction manager and HYDC may negotiate with some or all of the responding contractors. Revisions to proposals may be permitted after submissions and prior to the award of a contract for the purpose of obtaining best and final offers.
2. Award. After consulting with the construction manager, HYDC shall direct that the construction manager award the contract to the responsible contractor whose proposal HYDC determines to be the most advantageous to HYDC, taking into consideration price and appropriate evaluation factors.

#### **H. Use of Other Governmental Contracts**

Notwithstanding any other provision of this Article I, if there is a Federal, New York State, New York City, or New York City Economic Development Corporation contract for goods or services that permits HYDC to utilize such contract or to obtain goods and services from the contractor under such contract on terms substantially equal to those under such contract, HYDC may utilize such contract or obtain goods and services from such contractor on terms substantially equal to those under such contract without using any other procurement method described in this Article I.

#### **II. VENDOR RESPONSIBILITY**

A. Section 2-08 of New York City Procurement Policy Board Rules. HYDC hereby adopts the Vendor Responsibility rules set forth in Section 2-08 of the New York City Procurement Policy Board Rules.

B. Additional Responsibility Determinations. All contract awards for an amount above \$25,000, if not otherwise covered by Section 2-08 of the PPB Rules, shall be subject to the internal vendor responsibility determination procedures of HYDC.