

**GOVERNORS ISLAND CORPORATION
d/b/a THE TRUST FOR GOVERNORS ISLAND**

CONTRACTS BY THE CORPORATION - PROCUREMENT POLICY

**[INITIALLY ADOPTED ON OCTOBER 13, 2010
REVISED ON APRIL 13, 2011, DECEMBER 18, 2012, APRIL 7, 2014,
OCTOBER 11, 2017, OCTOBER 4, 2019, and DECEMBER 14, 2022]**

The procurement requirements set forth below are in accordance with the Corporation's Master Contract with the City of New York and are applicable to contracts of the Corporation set forth below shall be hereafter referred to as the "Requirements".

I. Methods of Awarding Contracts

Unless otherwise authorized by law, all contracts by the Corporation shall be awarded by competitive sealed bidding, pursuant to Section VI below, except as otherwise provided in these Requirements. Where federal or State law, rules or regulations applicable to any funds received by the Corporation prescribe procurement requirements that differ from these Requirements, the requirements of such laws, rules or regulations shall govern with respect to contracts funded with such funds.

II. Personal and Professional Services

(a) Personal and professional services shall be procured by the Corporation in accordance with this Section, except as otherwise authorized by Sections III, IV, V, VIII and IX below, unless the Deputy Mayor shall specifically, or by general guidelines specify, procurement by the Corporation pursuant to Sections VI or VII for particular kinds of such services. The above notwithstanding, outside legal counsel shall be retained only in accordance with Section 3.02 of the Corporation's Master Contract with The City of New York (the "City").

(b) It shall be the policy of the Corporation to announce publicly all requirements for personal and professional services, and to negotiate contracts for such services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(c) In the procurement of personal or professional services, the President shall encourage firms or persons engaged in the lawful practice of their profession, including local minority and women owned firms, to bid on procurements made available by the Corporation. A committee of qualified personnel of the Corporation shall comprise a Consultant Selection Committee for each personal or professional services contract procured pursuant to this Section II. The Consultant Selection Committee shall evaluate current statements of qualification and performance data on file with the Corporation, together with those that may be submitted by other firms regarding the proposed contract. The Consultant Selection Committee or President shall obtain proposals from no less than three persons or firms regarding the contract and then shall select therefrom, in order of preference, based upon written criteria of the Consultant Selection Committee or President, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(d) The President shall negotiate a contract with the highest qualified firm or person, at compensation that the President determines in writing to be fair and reasonable to the Corporation and the City. In making this decision, the President shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the President be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the President determines to be fair and reasonable to the Corporation and the City, the President shall terminate negotiations with that firm, and the President shall undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the President shall terminate negotiations and the President shall undertake negotiations with the third most qualified firm. Should the President be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the President shall select additional firms in order of their competence and qualifications, and shall continue negotiations in accordance with this Section until an agreement is reached.

III. Small Purchases

Any procurement (other than contracts for legal counsel) for an amount larger than \$20,000 but not exceeding \$100,000 may be made without compliance with any other Requirements herein, provided the Corporation shall use reasonable efforts to obtain offers from at least three responsible persons or entities to perform the work, unless the Deputy Mayor agrees otherwise. If the City's Procurement Policy Board Rules permit the City to make a small purchase procurement for goods,

information technologies, construction, construction-related services or other services or any other matter for a larger amount than the limit set forth above for the Corporation, then such higher limit shall also apply to the Corporation under this Section III. With regard to procurements of \$20,000 or less, the Corporation shall obtain offers from one or more persons or entities as it deems appropriate. If the Corporation only obtains an offer from one person or entity under this Section, it will not be considered a sole source procurement under these Requirements. Procurements shall not be artificially divided so as to constitute a small purchase under this Section. The Corporation shall maintain records of the contractors approached and their responses.

IV. Sole Source Procurement

A contract may be awarded for a supply, service or construction item without competition when permitted specifically by, or under general guidelines of, the Deputy Mayor, or when, with the Deputy Mayor's approval, the President determines in writing that there is only one source for the required supply, service or construction item.

For contracts in excess of \$25,000, the Corporation shall provide written notice to the Commissioner of New York City Department of Small Business Services (the "Commissioner") the selection of a contractor without competition. The required notice shall set forth the justification for such selection and the Commissioner shall have the right to disapprove the selection within five business days of receipt of said notice.

V. Emergency Procurement

Notwithstanding any other provision of these Requirements, the President may make or authorize others to make emergency procurement when there exists a threat to public health, welfare or safety or to property in which the City or the Corporation has an interest, or under emergency conditions as identified specifically by, or under general guidelines of, the Deputy Mayor, provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

VI. Competitive Sealed Bidding

(a) Contracts by the Corporation shall be awarded by competitive sealed bidding except as otherwise provided in these Requirements.

(b) An Invitation for Bids shall be issued and shall include (whether by attachment or reference) a description of the goods or services requested, and all contractual terms and conditions applicable to the procurement. Adequate 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. In addition, the Corporation may publish such notice in a newspaper of general circulation for a reasonable time prior to bid opening.

(c) 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.

(d) Bids shall be unconditionally accepted without alteration or correction on the part of the bidder except as authorized in this Section. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in instances in which the President finds that it is in the Corporation's and the City's interest to do so. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Corporation or the City or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the President.

(e) Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used.

(f) 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 the Corporation reasonably deems it is in the Corporation's or the City's interest to do so.

VII. Competitive Sealed Proposals

(a) When permitted specifically by, or under general guidelines of, the Deputy Mayor, a contract may be entered into by competitive sealed proposals.

(b) Proposals shall be solicited through a Request for Proposals. Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section VI(b).

(c) 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.

(d) Proposals shall be evaluated on the basis of the quality of the proposals, based on the relative importance of such criteria as: capacity to execute the proposal; if relevant, the experience in the area of knowledge or community to be served or studied or to be the site of the work; and the cost.

(e) As provided in the Request for Proposals and under guidelines of the Deputy Mayor, 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.

(f) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Corporation and the City taking into consideration the evaluation factors set forth in subsection (d). The contract file shall contain the basis on which the award is made.

VIII. Contractors Recommended by Construction Manager

(a) Conditions for Use. When the Corporation has retained a construction manager who or which works on a construction project, any contract for construction or construction-related goods or services (including, without limitation, contracts for fixtures, furnishings and equipment) may be entered into pursuant to the procedure set forth in this Section VIII in lieu of the procedures set forth in Sections VI and VII. If the Corporation has retained a construction manager who or which performs facilities management services for the Corporation, any contracts related to facilities management

services (including, without limitation, contracts for construction or construction-related goods or services, including contracts for fixtures, furnishings and equipment) may also be procured using the procedure set forth in this Section.

(b) Selection of Contractors. If the Corporation decides to enter into a contract pursuant to the procedures set forth in this Section, then, unless the Deputy Mayor agrees to a lesser number, the Corporation's construction manager shall recommend to the Corporation five potential contractors whenever feasible, but in all cases a minimum of three potential contractors for each contract. The Corporation shall review such list of potential contractors and determine which of them the Corporation considers to be appropriate. Proposal packages will be sent by the construction manager or the Corporation to all such contractors. The construction manager and the Corporation shall review the proposals received from responding contractors, and the construction manager and the Corporation 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.

(c) Award. After consultations between the construction manager and the Corporation, the construction manager or the Corporation (at the Corporation's discretion) shall award the contract to the responsible contractor whose proposal the Corporation determines to be the most advantageous to the Corporation and the City, taking into consideration price and appropriate evaluation factors. The contract file shall contain the basis on which the award is made.

IX. Construction Manager Subcontracts

When the Corporation, using a procurement method set forth in these Requirements, has retained a construction manager for work with regard to a construction project and/or with regard to facilities management services, such construction manager may only enter into construction, construction-related and/or facilities management-related subcontracts for goods or services (including, without limitation, contracts for fixtures, furnishings and equipment), related to such construction project or facilities management services, using procurement methods similar to those that the Corporation may use were it contracting directly for such goods or services.

X. Use of Other Governmental Contracts

Notwithstanding any other provision of these Requirements, if, after consultation with the Corporation, the Corporation Counsel determines that there is a contract procured by the Federal Government, the State or the City, or contracts from the New York City Economic Development Corporation, Brooklyn Bridge Park Corporation or Brooklyn Navy Yard Development Corporation for goods or services that permits the Corporation 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, the Corporation 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 Requirements.

XI. Contracts to be Fully Funded with Non-Public Funds

(a) It shall be the policy of the Corporation to select all contractors and negotiate all contracts for goods, services or construction to be funded entirely with privately raised funds (“Privately Funded Contracts”) and not with any public funds, on the basis of demonstrated competence and qualifications for the type of goods, services or construction required, and at fair and reasonable prices. Notwithstanding any other provision of these Requirements, for such Privately Funded Contracts, the Corporation shall have the option to use either the applicable procurements rules otherwise set forth in these Requirements or the procurement rules set forth in this Section X.

(b) Policy. Any procurement (other than contracts for legal counsel) for an amount larger than \$20,000 but not exceeding \$100,000 may be made without compliance with any other Requirements herein, provided the Corporation shall use reasonable efforts to obtain offers from at least three responsible persons or entities to perform the work, unless the Deputy Mayor agrees otherwise. With regard to procurements of \$20,000 or less, the Corporation shall obtain offers from one or more persons or entities as it deems appropriate. If the Corporation only obtains an offer from one person or entity under this Section, it will not be considered a sole source procurement under these Requirements. Procurements shall not be artificially divided so as to constitute a small purchase under this Section. The Corporation shall maintain records of the contractors approached and their responses.

(c) Privately Funded Construction Contracts. Except as otherwise approved by the Deputy Mayor in writing, each and any Privately Funded Construction Contract entered into by the Corporation shall provide:

(i) that payment thereunder shall be made by the Corporation only for work performed to the satisfaction of the President and only after written approval by the President of a written voucher submitted by the contractor;

(ii) that neither the contractor nor any of its employees nor any of its subcontractors is or shall be an agent, servant or employee of the City by virtue of the contract or by virtue of any approval, permit, license, grant, right or other authorization given by the City or any of its officers, agents or employees; and that the contractor shall indemnify and hold harmless the Corporation and the City, their agents and employees from any and all claims, judgments or liabilities to which they may be subject because of any act or omission of the contractor, its agents, employees or subcontractors in connection with the contract or because of any negligence or any fault or default of the contractor, its agents, employees or subcontractors;

(iii) that such Privately Funded Contract shall be for a specified term and provide for completion of the work within such term;

(iv) that the contractor shall be obligated to pay liquidated damages, in amounts determined by the Corporation, in the event of a failure to complete the Privately Funded Construction Contract on schedule;

(v) that the Privately Funded Construction Contract shall be assignable to the City;

(vi) that the Corporation shall not pay any contractor under a Privately Funded Construction Contract unless the contract with such contractor contains all provisions required hereunder;

(vii) that the Corporation shall in good faith attempt to enforce the provisions that are required to be included in Privately Funded Construction Contracts as specified in this Section X(b).

(c) Privately Funded Contract for Goods or Services. Except as otherwise approved by the Deputy Mayor in writing, Privately Funded Contracts for Goods and Services shall provide:

(i) neither the contractor nor any of its employees nor any of its subcontractors is or shall be an agent, servant or employee of the City by virtue of the contract or by virtue of any approval, permit, license, grant, right or other authorization given by the City or any of its officers, agents or employees; and that contractor shall indemnify and hold harmless the Corporation and the City, their agents and employees from any and all claims, judgments or liabilities to which they may be subject because of any act or omission of the contractor, its agents, employees or subcontractors in connection with the contract or because of any negligence or any fault or default of the contractor, its agents, employees or subcontractors;

(ii) such Privately Funded Contracts for goods and services shall be assignable to the City.

(d) Insurance. Except as otherwise approved by the Deputy Mayor in writing, the Corporation shall:

(i) cause any contractors under Privately Funded Contracts to maintain worker's compensation and disability benefits insurance in statutory amounts and, subject to the provisions in subparagraph (2), commercial general liability insurance naming the Corporation and the City as Additional Insureds, and containing provisions analogous to those required under Section 7.04 of the Corporation's contract with the City, together with such additional insurance as may be appropriate for the type of work being performed;

(ii) require such insurance to be carried by its contractors retained pursuant to these procurement rules in the types and amounts as are reasonable and customary according to the size and type of contract and provided that notwithstanding the above, the Corporation shall require its construction contractors and goods and services contractors retained pursuant to these procurement rules to carry such additional insurance as the Deputy Mayor may direct;

(iii) require that no work shall be undertaken pursuant to a Privately Funded Construction Contract or Privately Funded Goods and Services Contract hereunder unless and until the Corporation has provided the Deputy Mayor with a copy of each policy, or suitable certificate, and proof of payment with respect to all insurance herein required to be obtained by the construction contractor or goods and services contractor.

XII. Corporation Counsel

The Board of Directors of the Corporation shall approve the identity of all outside counsel retained by the Corporation except in an emergency. The Corporation's fee arrangements with all outside counsel shall be subject to approval by the Corporation Counsel of the City.

XIII. Board Approval

The following actions, without limitation, will require the approval of the Corporation's Board of Directors: all contracts, including contracts entered into by the Corporation's Construction Manager, with aggregate payment obligations by the Corporation in excess of the value specified in Article IV of the Corporation's By-Laws except for those contracts described in Section VIII.