



SAMPLE

Procurement

Policy and

Procedures

PROCUREMENT POLICY AND PROCEDURES

This Procurement Manual is a comprehensive reference book for PBC personnel and outside parties having an interest in PBC's procurement process.

PBC's procurement policy and procedures are subject to state and federal laws, regulations and policies. These are intended as a guide to good procurement practices and are to be used as a supplement to sound business judgment in procurement and contracting.

Chapter 1: Procurement Policy Statement

PBC ACT

Sec. 20. Contracts let to lowest responsible bidder; competitive bidding; advertisement for bids; design-build contracts.

(a) All contracts to be let for the construction, alteration, improvement, repair, enlargement, demolition or removal of any buildings or other facilities, or for materials or supplies to be furnished, where the amount thereof is in excess of \$20,000, shall be awarded as a design-build contract in accordance with Sections 20.3 through 20.20 or shall be let to the lowest responsible bidder, or bidders, on open competitive bidding.

(b) A contract awarded on the basis of competitive bidding shall be awarded after public advertisement published at least once in each week for three consecutive weeks prior to the opening of bids, in a daily newspaper of general circulation in the county where the commission is located, except in the case of an emergency situation, as determined by the chief executive officer. If a contract is awarded in an emergency situation, (i) the contract accepted must be based on the lowest responsible proposal after the commission has made a diligent effort to solicit multiple proposals by telephone, facsimile, or other efficient means and (ii) the chief executive officer must submit a report at the next regular meeting of the Board, to be ratified by the Board and entered into the official record, that states the chief executive officer's reason for declaring an emergency situation, the names of all parties solicited for proposals, and their proposals and that includes a copy of the contract awarded. Nothing contained in this Section shall be construed to prohibit the Board of Commissioners from placing additional advertisements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract in sufficient detail to enable the bidders thereon to know what their obligation will be, either in the advertisement itself, or by reference to detailed plans and specifications on file in the office of the Public Building Commission at the time of the publication of the first announcement. Such advertisement shall also state the date, time, and place assigned for the opening of bids. No bids shall be received at any time subsequent to the time indicated in said advertisement.

(c) In addition to the requirements of Section 20.3, the Commission shall advertise a design-build solicitation at least once in a daily newspaper of general circulation in the county where the Commission is located. The date that Phase I submissions by design-build entities are due must be at least 14 calendar days after the date the newspaper advertisement for design-build proposals is first published. The advertisement shall identify the design-build project, the due date, the place and time for Phase I submissions, and the place where proposers can obtain a complete copy of the request for design-build proposals, including the criteria for evaluation and the scope and performance criteria. The Commission is not precluded from using other media or from placing advertisements in addition to the one required under this subsection.

(d) The Board of Commissioners may reject any and all bids and proposals received and may readvertise for bids or issue a new request for design-build proposals.

(e) All bids shall be open to public inspection in the office of the Public Building Commission after an award or final selection has been made. The successful bidder for such work shall enter into contracts furnished and prescribed by the Board of Commissioners and in addition to any other bonds required under this Act the successful bidder shall execute and give bond, payable to and to be approved by the Commission, with a corporate surety authorized to do business under the laws of the State of Illinois, in an amount to be determined by the Board of Commissioners, conditioned upon the payment of all labor furnished and materials supplied in the prosecution of the contracted work. If the bidder whose bid has been accepted shall neglect or refuse to accept the contract within five (5) days after written notice that the same has been awarded to him, or if he accepts but does not execute the contract and give the proper security, the Commission may accept the next lowest bidder, or readvertise and relet in manner above provided.

(f) In case any work shall be abandoned by any contractor or design-build entity, the Commission may, if the best interests of the Commission be thereby served, adopt on behalf of the Commission all subcontracts made by such contractor or design-build entity for such work and all such sub-contractors shall be bound by such adoption if made;

and the Commission shall, in the manner provided in this Act, readvertise and relet, or request proposals and award design-build contracts for, the work specified in the original contract exclusive of so much thereof as shall be accepted. Every contract when made and entered into, as provided in this Section or Section 20.20, shall be executed, held by the Commission, and filed in its records, and one copy of which shall be given to the contractor or design-build entity.

(g) The provisions of this Section with respect to design-build shall have no effect beginning on June 1, 2023; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective. The actions of any person or entity taken on or after June 1, 2013 and before the effective date of this amendatory Act of the 98th General Assembly in reliance on the provisions of this Section with respect to design-build continuing to be effective are hereby validated.

Sec. 2.5. Legislative policy; conditions for use of design-build. It is the intent of the General Assembly that a commission be allowed to use the design-build delivery method for public projects if it is shown to be in the commission's best interest for that particular project.

It shall be the policy of the commission in the procurement of design-build services to publicly announce all requirements for design-build services and to procure these services on the basis of demonstrated competence and qualifications and with due regard for the principles of competitive selection.

The commission shall, prior to issuing requests for proposals, promulgate and publish procedures for the solicitation and award of contracts pursuant to this Act.

The commission shall, for each public project or projects permitted under this Act, make a written determination, including a description as to the particular advantages of the design-build procurement method, that it is in the best interests of the commission to enter into a design-build contract for the project or projects.

In making that determination, the following factors shall be considered:

- (1) The probability that the design-build procurement method will be in the best interests of the commission by providing a material savings of time or cost over the design-bid-build or other delivery system.
- (2) The type and size of the project and its suitability to the design-build procurement method.
- (3) The ability of the design-build entity to define and provide comprehensive scope and performance criteria for the project.

The commission shall require the design-build entity to comply with the utilization goals established by the corporate authorities of the commission for minority and women business enterprises and to comply with Section 2-105 of the Illinois Human Rights Act.

This Section is repealed on June 1, 2023; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

Sec. 20.3. Solicitation of design-build proposals.

(a) When the Commission elects to use the design-build delivery method, it must issue a notice of intent to receive proposals for the project at least 14 days before issuing the request for the proposal. The Commission must publish the advance notice in a daily newspaper of general circulation in the county where the Commission is located. The Commission is encouraged to use publication of the notice in related construction industry service publications. A brief description of the proposed procurement must be included in the notice. The Commission must provide a copy of the request for proposal to any party requesting a copy.

(b) The request for proposal shall be prepared for each project and must contain, without limitation, the following information:

- (1) The name of the Commission.
- (2) A preliminary schedule for the completion of the contract.
- (3) The proposed budget for the project, the source of funds, and the currently available funds at the time the request for proposal is submitted.
- (4) Prequalification criteria for design-build entities wishing to submit proposals. The Commission shall include, at a minimum, its normal prequalification, licensing, registration, and other requirements, but nothing contained herein precludes the use of additional prequalification criteria by the Commission.
- (5) Material requirements of the contract, including but not limited to, the proposed terms and conditions, required performance and payment bonds, insurance, and the entity's plan to comply with the utilization goals established by the corporate authorities of the Commission for minority and women business enterprises and to comply with

Section 2-105 of the Illinois Human Rights Act.

(6) The performance criteria.

(7) The evaluation criteria for each phase of the solicitation.

(8) The number of entities that will be considered for the technical and cost evaluation phase.

(c) The Commission may include any other relevant information that it chooses to supply. The design-build entity shall be entitled to rely upon the accuracy of this documentation in the development of its proposal.

(d) The date that proposals are due must be at least 21 calendar days after the date of the issuance of the request for proposal. In the event the cost of the project is estimated to exceed \$12,000,000, then the proposal due date must be at least 28 calendar days after the date of the issuance of the request for proposal. The Commission shall include in the request for proposal a minimum of 30 days to develop the Phase II submissions after the selection of entities from the Phase I evaluation is completed.

(e) This Section is repealed on June 1, 2023; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

Sec. 20.4. Development of design-build scope and performance criteria.

(a) The Commission shall develop, with the assistance of a licensed design professional, a request for proposal, which shall include scope and performance criteria. The scope and performance criteria must be in sufficient detail and contain adequate information to reasonably apprise the qualified design-build entities of the Commission's overall programmatic needs and goals, including criteria and preliminary design plans, general budget parameters, schedule, and delivery requirements.

(b) Each request for proposal shall also include a description of the level of design to be provided in the proposals. This description must include the scope and type of renderings, drawings, and specifications that, at a minimum, will be required by the Commission to be produced by the design-build entities.

(c) The scope and performance criteria shall be prepared by a design professional who is an employee of the Commission, or the Commission may contract with an independent design professional selected under the Local Government Professional Services Selection Act (50 ILCS 510/) to provide these services.

(d) The design professional that prepares the scope and performance criteria is prohibited from participating in any design-build entity proposal for the project.

(e) This Section is repealed on June 1, 2023; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

The Public Building Commission of Chicago ("PBC") Procurement Policy Statement, approved by the Board of Trustees ("Board"), establishes the broad framework for the PBC Procurement Regulations ("Regulations"). The Regulations consist of the Procurement Policy Statement and related Procedures to guide PBC's day-to-day procurement operations.

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3 Furthermore, these Regulations will supersede and amend or repeal any other prior Purchasing and/or related rules, regulations, by-laws or ordinances approved by the Board that are in conflict with the Regulations.

3.1 Procurement Thresholds

The following purchasing dollar thresholds provide the requirements that are approved by the Board of Trustees:

- i. **Purchases of up \$2,499.99:** Competitive bidding is not required. Such items may be purchased from any vendor offering the required goods or services at a reasonable price. Price comparison is highly recommended.

- ii. **Purchases of \$2,500 and up to \$25,000** require three price quotations in writing. The quotations must be summarized on the bid recapitulation sheet and attached to the requisition form. At least one of the three vendors must be a certified MBE/WBE vendor. If a sole source vendor, attach an updated vendor letter.
- iii. **Purchases in excess of \$25,000** formal competitive bidding is required. Formal competitive bidding requires that the initiating department prepare written specifications describing the required goods or services. The specifications must be submitted via e-mail to the Department of Procurement Services (procurementservices@PBC.edu) and with copy to the College Executive Director of Business Operations to ensure that the specifications are complete and in the proper form. Specifications shall be prepared as objectively as possible, so that the advantage provided to any particular vendor is based on the appropriateness of that vendor's product.

3.2 Competitively Bid Procurements

PBC will conduct all procurement transactions consistent with the above-stated procurement standards through the use of those competitive procurement procedures best suited to the particular procurement, except as otherwise specifically justified.

Except as otherwise authorized by these Procurement Policy and Procedures or otherwise specifically justified, all Purchase Orders or contracts for the purchase or sale of real property, the purchase, lease, or sale of personal property, equipment, materials or supplies, labor services or construction over \$25,000 by or on behalf of the PBC will be let by free and open Competitive Bidding.

PBC utilizes a variety of procurement methods such as, Sealed Bids (Invitation for Bids), Request for Proposals, Request for Qualifications, Letters of Intent and Request for Information.

A. Sealed Bids (Invitation for Bids) will be utilized if:

- i. A complete, adequate, precise and realistic specification or purchase description is available;
- ii. The award will be made on the basis of price and price-related factors;
- iii. It will not be necessary to conduct discussions with the responding Vendors about their Bids;
- iv. There is a reasonable expectation of receiving more than one sealed Bid; and
- v. The procurement generally lends itself to a firm fixed price contract.
- vi. PBC will have procedures to ensure the fair and unbiased evaluation of

Bids. PBC will have procedures to ensure that only the lowest, responsive (including M/WBE compliant) and responsible Bidders are recommended for award of contracts.

B. Negotiated procurements (Requests for Proposals, Requests for Letters of Interest and Qualifications) will be used if the nature of the procurement does not lend itself to sealed bidding and PBC expects that more than one source will be willing and able to submit a proposal.

PBC will have procedures to ensure the fair and unbiased evaluation of competing Proposals.

These procedures will incorporate a clear and accurate description of the technical requirements and a comprehensive scope of work for the goods or services to be procured.

- i. Requests for Proposals ("RFPs") will clearly state the evaluation factors, including cost or price, cost or price-related factors and non-cost or non-price related technical and business management factors that will be considered in making a Contractor selection/recommendation.
- ii. Requests for Letters of Interest and Qualifications ("LIQs and RFQs") will clearly state the evaluation factors that will be considered in making a Contractor selection/recommendation.

3.3 Acceptable Non-Competitively Bid Procurements (Exceptions)

PBC will conduct all procurement transactions consistent with the above-stated procurement standards. However, items A through N below are exceptions to this general requirement. Exemption from the formal competitive bidding procedure does not exclude bids and proposals from complying with the Board approved M/WBE Participation Plan.

While the items listed below are exceptions to the formal competitive bidding process, all purchasers should perform due diligence in describing a comprehensive scope of services and obtaining the best price.

- A. Contracts for services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part;
- B. Contracts for the printing of finance committee reports and departmental reports;
- C. Contracts for the printing or engraving of bonds, tax warrants and other evidence of indebtedness;
- D. Contracts for materials and work which have been awarded to the lowest responsible bidder, and due to unforeseen revisions, not the fault of the contractor for materials and work, must be revised causing expenditures not in excess of 10% of the contract price;
- E. Contracts for the maintenance or servicing of or provision of repair parts for equipment that are made with the manufacturer or authorized service agent of that equipment where the provision of parts, maintenance, or servicing can best be performed by the manufacturer or authorized service agent;
- F. Purchases and contracts for the use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and inter-connect equipment, software, and services;
- G. Contracts for duplicating machines and supplies;
- H. Contracts for the purpose of natural gas when the cost is less than that offered by a public utility;
- I. Purchases of equipment previously owned by some entity other than the district itself;
- J. Contracts for repair, maintenance, remodeling, renovation, or construction, or a single project involving an expenditure that does not exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility;
- K. Contracts for goods or services procured from another governmental agency;
- L. Contracts for goods or services which are economically procurable from only one source such as for the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone or telegraph;
- M. Where funds are expended in an emergency and such emergency expenditure is approved by the Chair of the Board or his designee.
- N. Contracts for the purchase of perishable foods and perishable beverages.

3.4 Contracting with Minority and Women Owned Business Enterprises (M/WBE)

PBC has adopted the amended Minority and Women Business Enterprise to ensure that Minority Businesses and Women Businesses shall have maximum feasible opportunities to participate on PBC contracts, and to remedy the effects of historical discrimination while minimizing its impact upon Non-MBE and Non-WBE businesses. In order to achieve these ideals, the PBC has an overall goal for professional services of 25% of its contracting dollars to certified MBEs and 7% to WBEs.

The primary method to meet the contracting ideals is to include the MBE/WBE Plan in contract documents. Vendors' proposed utilization of MBEs and WBEs are then considered in determining their responsibility in performing the subsequent contract.

Compliance with MBE or WBE requirements will be considered in determining whether the bidder or proposer is responsive. When comparing bids and proposals for a contract, the proposed level of M/WBE compliance and the vendor's past compliance performance shall be elements of the deciding criteria.

PBC's Compliance will review details of the Plan regularly for updates.

A. Indirect/Direct Participation of Certified MBE/WBE Vendors

- i. Bidders and Proposers will be required to demonstrate (using the Plan's required schedules) that the proposed MBE and WBE participants will be directly involved in providing goods or services to the District in accordance with the requested scope of services to the maximum feasible extent.
- ii. If circumstances don't allow for direct participation, bidders and proposers can consider meeting the Plan's goals through indirect participation which is the utilization of certified MBE or WBE vendors to provide goods and/or services to the prime vendor (and not the district) outside of the proposed being considered for PBC.
- iii. Validation of either direct or indirect participation is made by providing a copy of each MBE or WBE vendor's current certification document(s) and their Letters of Intent to perform for credit on the contract (Schedule C).

B. Request for a Waiver from Compliance with PBC's Board Approved Participation Plan

- i. If a vendor is unable to identify certified MBE and WBE vendors to fulfill participation goals for the proposed contract or agreement, and there are no vendors detailed as direct participants, the bidder/proposer must include a written request for a waiver from compliance with PBC's Board Approved Participation Plan.
- ii. The request for a waiver is to be completed using a Schedule D and submitted with the bid or proposal. Approval is not automatic and can only be approved as a result of a recommendation from the Office of MBE/WBE Contract Compliance to the Chancellor and is based on the following: (a) supporting documentation demonstrating the bidder/proposer's inability to obtain sufficient certified MBE and/or WBE vendors, (b) good faith attempts to achieve such participation.

C. Report of the District's M/WBE Compliance to the Board of Trustees

- i. The Office of M/WBE Contract Compliance shall prepare cumulative, year-to-date quarterly reports throughout the fiscal year to the Board of Trustees regarding PBC's status in achieving its ideals of expending 25% and 7% with MBEs and WBEs respectively.
- ii. These reports shall consist of: (a) each business unit's total amount of dollars spent on contracts with opportunities for MBE or WBE participation, (b) the amount of dollars spent and the percentages used on MBE and WBE vendors, (c) the amount of dollars spent and percentages used with vendors residing within the city limits of Chicago, and (d) analysis figures comparing the current fiscal year with figures from previous fiscal year.

3.5 Procurement Authority

Authority and responsibility to enter into contracts for PBC is vested in the Chair of the Board, Chancellor and College President, and their designees or others as appropriately determined. The responsibilities described herein remain with the enumerated PBC job functions regardless of department or organization.

3.6 Reporting

All contracts authorized and executed will either be presented to the Board for consideration or will be reported to the Board. Reports of the terms of any concession, lease, license, right of entry, permit or easement of real property authorized by the President or designee, will be provided to the Board. Reports of procurements not requiring Board consideration will be reported to the Board monthly.

Chapter 2: Definitions

1. "Architect" or "Architect/Engineer" means any person or firm employed by the Commission for the purpose of designing the project.
2. "Change Order" is the document signed by the Contractor and the Commission, or, in circumstances stated in Book 2, the Commission alone, which authorized either an adjustment in the Contract sum and/or Contract time or a change in the Work that may not result in such an adjustment. All Change Orders shall be within the general scope of the contract and cannot represent cardinal changes to the contract.

A cardinal change is a major deviation from the original purpose of the work or the intended method of achievement, or a revision of contract work so extensive, significant or cumulative that, in effect, the contractor is required to perform very different work from that described in this contract.
3. "City of Chicago Residents" means persons domiciled within the City of Chicago. Domicile is an individual's one and only true, fixed, and permanent home and principal establishment.
4. "Commission" means the Public Building Commission of Chicago, a municipal corporation organized under the Public Building Commission Act of the State of Illinois, as amended, or its duly authorized officers or employees.
5. "Commission Representative" means the person assigned, in writing, by the Executive Director to be the Commission's Representative for the project.
6. "Construction Closeout" means the period from Substantial Completion through Final Acceptance and payment, including completion of all required deliverables, in accordance with the Contract Documents.
7. "Contract" or "Contract Documents" means all of the following component parts, including exhibits attached thereto and/or incorporated therein by reference, and all amendments, modifications and revisions made from time to time in accordance with the provisions hereof:
 - a. Book 1 – Project Information, Instructions to Bidders, and Execution Documents
 - b. Book 2 – Standard Terms and Conditions for Construction Contracts
 - c. Book 3 -- Technical Specifications and Drawings
8. "Contract Completion Date" is the date on which the Contractor must achieve Substantial Completion. The Contract Completion Date will be determined based on the time for completion of the Work stated in Book 1, Section II.C, adjusted by any Change Orders that extend or reduce the time for completion of the Work.
9. "Contract Price" means the full amount of compensation to be paid for the Work to be performed by the Contractor as adjusted from time to time by Change Order.

10. "Contractor" means the partnership, firm, corporation, joint venture or entity entering into the Contract with the Commission to perform the Work required by the Contract Documents.
11. "Day" or "Days" means all days included in the calendar (Monday-Sunday inclusive of holidays). A day contains 24 hours.
12. "Delay" means any delay on the Critical Path of the Schedule.
13. "Digital Video" means moving visual images and audio as required.
14. "Drawings" are those enumerated in the Schedule of Drawings, and additional drawings and sketches, if any, incorporated into the Contract by a bulletin issued by the Architect or Change Order as the Work progresses.
15. "Environmental Law(s)" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.
16. "Executive Director" means the person employed by the Commission as its Executive Director or the Executive Director's designee.
17. "Field Order" means a written order to the Contractor, signed by the Commission Representative unilaterally directing changes in the Work or the Project CPM Schedule.
18. "Final Completion and Acceptance of the Work" means the last date on which all of the following events have occurred: the Commission has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract Documents; final inspections have been completed and operating systems and equipment testing have been completed; final occupancy certifications have been issued; Contractor's LEED Commissioning responsibilities required by the Contract Documents have been completed; all deliverables have been provided to the Commission; and all contractual requirements for final payment have been completed.
19. "First-tier Subcontractor" means any Subcontractor that has a contract with the General Contractor.
20. "Hazardous Materials" means asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, special nuclear materials, and by-product materials regulated under the Atomic Energy Act pesticides under the Federal Insecticide, Fungicide and Rodenticide Act and any hazardous waste, toxic substance or related material, including any substance defined or treated as "hazardous waste," "special waste," "toxic substance," or a comparable term in any Environmental Law.
21. "Local Government" or "City" means the City of Chicago, Illinois.
22. "Notice to Proceed" means the written notice issued by the Commission to the Contractor authorizing the Contractor to begin the Work, or specified portion of the Work, as applicable, on a certain date as specified within this Contract.
23. "OCDM" (or 'the System') refers to the PBC's designated On-line Collaboration and Document Management system. It shall be used by the Contractor to track the Work, manage the Project, and follow the Commission's procedures for electronic submission and receipt of documents as directed by the Commission Representative.
24. "Project" means the collective improvements to be constructed by the Contractor in accordance with the Contract.
25. "Project Community" means the area designated as the Project Community in Book 1, Section II.A shown in Exhibit # 3 for Book 1 "Project Community Area Map."
26. "Project Community Residents" means persons domiciled within the Project Community as designated by the Commission as stated in Book 1, Section II A.
27. "Punch List" is the list of Punch List Work, and "Punch List Work" means minor adjustments, repairs or deficiencies in the Work as determined at the sole discretion of the Commission. Items of incomplete Work that preclude full or beneficial use

of any portion of the Work or that preclude the Commission from full operation, maintenance, or security of the facility are not considered Punch List Work.

28. "Record Documents" are all documents required under the terms of the Contract to be provided to the Commission by the Contractor, including, but not limited to, shop drawings, as-built drawings, blue line drawings, parts manuals, operation and maintenance manuals, and Project manuals or specifications.
29. "Request for Information" or "RFI" means the document transmitted by the Contractor to the Architect via the Commission Representative seeking clarification or direction with respect to ambiguity, contradictions, errors or omissions in the Drawings and Technical Specifications.
30. "Safety Manager" means the person designated by the Commission to serve as Safety Manager.
31. "Schedule" means the critical path method (CPM) schedule submitted by the Contractor establishing time frames for the performance of components of the Work.
32. "Schedule of Values" means the detailed list of the value of each construction activity included in the Contract Price broken down by labor and materials that is submitted by the Contractor and approved by the Commission, as amended.
33. "Site" means the location(s) shown on the Drawings or described in the Technical Specifications, within which the Work will be performed under the Contract Documents.
34. "Special Waste" means those substances as defined in the Illinois Environmental Protection Act, and further defined in Illinois Administrative Code.
35. "Subcontractor" means any partnership, firm, corporation or entity other than an employee of the Contractor that furnishes labor and/or materials to the Contractor, whether or not the Subcontractor is in privity with the Contractor.
36. "Submittal" means a schedule, shop drawings, digital video, product data, samples, or other items as may be required by the Contract for review and/or approval prior to prosecution of a portion of the Work.
37. "Substantial Completion" of the Work occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the User may occupy the Project for the use for which it is intended, without unscheduled disruption.
38. "Technical Specifications" means the detailed requirements for the Work furnished by the Architect and set forth in Book 3 of the Contract Documents.
39. "User" or "User Agency" means the entity for which or on whose behalf the Commission has undertaken to cause the Work to be performed.
40. "Work" means the obligations of the Contractor under the Contract Documents. Work includes, unless specifically excepted by the Contract Documents, the furnishing of all materials, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, permits, inspections, occupancy approvals, insurance, taxes, and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also means that which is furnished, produced, constructed, or built pursuant to the Contract Documents.

Contract Amendment – A change to a contract that either adds to or deletes from the existing contract scope or that changes contract terms, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract.

Contract Award - The decision by the PBC to accept the Bid/Proposal subject to the execution and approval of a satisfactory Contract. The date of the Award is the date of execution of the Contract by the PBC.

Invitation for Bid (IFB) – A procurement process whereby the PBC requests interested parties to submit a Bid to provide or procure specified goods or services. IFBs are not negotiated procurements. IFBs result in a firm fixed-price contract awarded to the lowest responsive and responsible Bidder.

Job Order Contracting (JOC) – A contract for construction services under which Task or Work Orders or Job Order Requests are issued by PBC for specific construction projects. A JOC contract is a competitively procured firm-fixed-price, indefinite quantity contract.

Letter of Interest and Qualification (LIQ) – A qualification-based procurement process where price is not an evaluation factor. When federal funds are utilized, LIQs must be used for architectural and engineering services for projects related to or leading to construction and may be used for other procurements unless prohibited by applicable laws and regulations. LIQs are negotiated procurements.

Payment Bond – A bond that ensures payment as required by law to all persons supplying labor or material in the performance of the work provided for in the contract.

Performance Bond – A bond that secures performance and fulfillment of the Contractor's obligations under the contract.

Proposer – The general term for the entity that submits a response to a Solicitation. Any individual, firm, partnership, corporation, or combination thereof, submitting a Proposal for the work contemplated, acting directly or through a duly authorized representative. For the purposes of these Regulations, Proposer may be used interchangeable with Bidder or Offeror.

Protest – A written objection or complaint by an interested party to the terms, conditions, or form of a proposed procurement or to the proposed or actual award of a contract.

Public Notice – PBC's notice to the general public of purchase or sale solicitations, which must, at a minimum, be in a daily English language newspaper of general circulation.

Small Purchases – Purchases under \$25,000 that are generally awarded to the lowest responsive and responsible Bidder responding to an informal competitive Request for Quotes (RFQ), but may be alternatively awarded based on delivery requirements or other factors specified in the Request for Quotes.

Sole Source Procurement – A procurement method where the PBC solicits a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate.

Solicitation – The general term for PBC's request for offers from potential Bidders or Proposers. A solicitation generally contains the proposed contract, including contract terms and conditions, instructions to potential Bidders or Proposers regarding the submission of a Bid or Proposal, and any other information needed to prepare a Bid or Proposal.

Chapter 3: General Procurement Standards

3.1 Standards of Conduct

The procurement business of the PBC shall be conducted in a manner above reproach and with complete impartiality and without preferential treatment. Any violation of these standards may be cause for disciplinary action, including dismissal, if appropriate. No officer or employee shall:

- A. Release to an individual or entity or its representative any knowledge such person may possess or have acquired in any way concerning any proposed or actual procurement that would give an unfair competitive advantage to any potential or actual Bidder.
- B. Make any commitment or promise relating to the award of a contract or any representation which could be construed as such a commitment. Staff will not, under any circumstances, advise a business representative that any attempt will be made to influence another person to give preferential treatment to his or her company in the award of a contract.
- C. Use his or her position with PBC to coerce, or give the appearance of, coercing another person, and/or provide any financial benefit to persons with whom he or she has family, business or financial ties.
- D. Accept any gratuity for themselves, members of their families or others, either directly or indirectly, from any source that does or seeks to do business with, or has financial ties of any sort with PBC, or has personal interests that may be affected by the performance, or non-performance, of the official duties of PBC staff.
- E. Participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, exists.
- F. Accept any offer of employment or fees for services from a Contractor for one year following employment with PBC if the officer or employee, during the year immediately preceding termination of employment, participated personally and substantially in the award of contracts or the issuance of change orders with a cumulative value of \$25,000 or more to the Contractor, its parent or subsidiary. This provision also applies to the spouse or immediate family member living with the PBC officer or employee. In addition, for a period of one year after leaving the employment of PBC, the officer or employee shall not assist or represent the Contractor in any matter involving PBC if the officer or employee participated personally and substantially in the same subject matter, work, or function during his or her term of office or employment. If the former officer or employee exercised contract management authority with respect to a Contractor's contract, the prohibition is permanent as to that contract.

Furthermore, Purchasing Administrators shall inform all Contractors in writing of this provision.

- 3.2 Ethics Policy**
- 4 https://www.pbcchicago.com/wp-content/uploads/2017/05/RES_PBC_ecr_CodeofEthicsConsolApril-2013_20130405.pdf
- A. A Procurement Administrator shall report to the Vice Chancellor, Administrative and
- 4.1 Public Access to Procurement Information**
- Certain information about PBC procurements is normally considered public and should be released in accordance with these Regulations and applicable state laws and regulations concerning freedom of information. Other information related to procurement is often protected from disclosure; PBC must exercise caution to ensure that protected information is not made public.

Chapter 4: Procurement Management and Administration

- 4.1 General Provisions - Methods of Procurement (Except Real Property)**
- A. Competitive Bidding will be by Request for Sealed Bid/Invitation for Bids ("IFB"), Request for Proposals ("RFP"), or Letters of Interest and Qualifications ("LIQ").
- B. Except as otherwise authorized, all contracts or Purchase Orders for goods and services that exceed \$25,000 will comply with the Competitive Bidding and Public Advertisement requirements of these Regulations.
- C. All contracts or Purchase Orders that do not exceed \$25,000 will be awarded competitively whenever possible, and in any event, in a manner calculated to ensure the best interest of the public and PBC.
- D. PBC may engage brokers for the sale or purchase of non-real estate assets as PBC deems appropriate and if it is in PBC's best interest to do so. Each broker that PBC engages must abide by established processes and procedures that comply with all state, Federal, and local rules and regulations. If broker processes and procedures are different from the Procurement Procedures for the sale or purchase of non-real estate assets as set forth in the Procurement Policy and Procedures, those processes and procedures must be approved by the General Counsel prior to implementation.

4.2 Emergency Purchases/Contracts

In the case of an emergency situation, as determined by the chief executive officer. If a contract is awarded in an emergency situation, (i) the contract accepted must be based on the lowest responsible proposal after the commission has made a diligent effort to solicit multiple proposals by telephone, facsimile, or other efficient means and (ii) the chief executive officer must submit a report at the next regular meeting of the Board, to be ratified by the Board and entered into the official record, that states the chief executive officer's reason for declaring an emergency situation, the names of all parties solicited for proposals, and their proposals and that includes a copy of the contract awarded. Nothing contained in this Section shall be construed to prohibit the Board of Commissioners from placing additional advertisements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract in sufficient detail to enable the bidders thereon to know what their obligation will be, either in the advertisement itself, or by reference to detailed plans and specifications on file in the office of the Public Building Commission at the time of the publication of the first announcement. Such advertisement shall also state the date, time, and place assigned for the opening of bids. No bids shall be received at any time subsequent to the time indicated in said

advertisement.

4.3 Joint Procurement

In addition to the other procurement methods authorized, The Board has authorized joint procurement when it has been determined to be advantageous to the District under the following circumstances:

A. Piggybacking

1. Contracts awarded by other governmental or transportation agencies if such contracts permit participation by other government agencies. Under these circumstances, each unit of government is only responsible to pay for the goods and/or services that it purchases.
2. Contracts awarded by agencies of the State of Illinois, if such contracts permit this practice.
3. Contracts awarded by other units of local government, if such contracts permit this practice.
4. Orders placed under United States General Services Administration schedules, in accordance with applicable federal regulations.

B. Procurement with Units of Government or Other Agencies

Procurements may be issued jointly with one or more units of local government or agencies of the State of Illinois. All such jointly issued procurements will be solicited and negotiated jointly. Each participant in the joint procurement will enter into its own contract with the chosen Contractor(s). The Chancellor or designee is authorized to represent the Board in connection with the preparation and issuance of any joint RFP's.

C. All joint procurement contracts are subject to the approval and execution limits otherwise outlined in these Regulations.

4.4 Procurement Planning and Concurrence Review

The procurement process formally begins with the preparation of a Requisition and its submission to the Purchasing Department. However, planning for contracts and procurement actions should begin as soon as the need for the item, service or property is identified. PBC will proceed to conduct all procurement transactions through the use of those competitive procurement procedures best suited to the particular procurement, except as otherwise specifically justified.

4.5 Procurement History

The documentation in each contract file maintained by the Purchasing Department shall be sufficient to constitute a complete history of the transaction, including but not limited to, the basis for the procurement and the award, the assignment of contract administration and any subsequent action taken by the Purchasing Department.

4.6 Specifications and Purchase Descriptions

- A. Materials, supplies and equipment plans, drawings, specifications or purchase descriptions for procurements shall state only the actual minimum needs (in quantity, as appropriate) of PBC

and the maximum needs (in quantity, as appropriate) of PBC and describe the material, supplies or equipment in a manner which will encourage maximum competition and eliminate, insofar as possible, any restrictive features which might limit acceptable offers to one supplier's product, or the products of a relatively few suppliers. Items to be procured shall be described by reference to the applicable specifications or by a description containing the necessary requirements. The term "specification," as used herein, is a clear and accurate description of the technical requirements for the material, supplies or equipment. Specifications also contain preservation, packaging, packing, and marking requirements.

B. Construction Specifications

The technical provisions of construction specifications shall be in sufficient detail so that, when used with the applicable drawings and the specifications and standards incorporated by reference, Bids can be prepared on a fair and competitive basis. Materials, equipment, components, or systems shall be described, where possible, by reference to documents generally known in the industry. The standards which best represent no more and no less than the PBC's minimum needs shall be selected for incorporation by reference into the construction specifications. This section may not apply to construction contracts for design build, construction manager at risk and job order contracts.

C. Service Contracts

The scope of work approach is preferred for most PBC service contracts. A scope of work defines the minimum work required of a Contractor and the milestones or deliverables required under the contract. In addition, a minimum requirement must be identified for Contractor qualifications. The scope of work must identify the minimum experience required of the Contractor.

D. Purchase Descriptions

A purchase description may be used in lieu of a specification where no applicable specification exists. An adequate purchase description is an aid to competition and, in the absence of competition, aids in determining the reasonableness of price. A purchase description should set forth the essential physical and functional characteristics of the materials required. Purchase descriptions of services to be procured should outline to the greatest degree practicable the specific services the Contractor is expected to perform.

Purchase descriptions shall not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer and thereby precluding consideration of a product manufactured by another firm, unless it is determined that the particular feature is essential to the PBC requirements, and that similar products of other companies lacking the particular features would not meet the minimum requirements for the item. Generally, the minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal". In order for the "or equal" to be evaluated, a listing of salient minimum characteristics of the equivalent part must be included.

4.7 Delivery and Performance Requirements

The time of delivery or performance is an essential contract element that shall be clearly stated in each solicitation. A Procurement Administrator shall ensure that a delivery or performance schedule is realistic and meets the requirements of the procurement.

- A. When establishing a contract delivery or performance schedule for goods or services, the Procurement Administrator shall consider applicable factors, including the following:
 - i. Urgency of need;
 - ii. Production time;
 - iii. Market conditions;
 - iv. Transportation time;
 - v. Industry practices;
 - vi. Time for obtaining and evaluating Bids or offers and awarding contracts;
 - vii. Time for Contractors to comply with any condition precedent to contract performance; and
 - viii. Time for PBC to perform its obligations under contract, such as furnishing PBC property to the Contractor.
- B. The Procurement Administrator may establish contract delivery or performance schedules on the basis of any of the following:
 - i. A specific calendar date or dates;
 - ii. A specific period or periods from the date of the contract;
 - iii. A specific period or periods from the date agreed upon by the parties and set forth in the contract for actual commencement of performance on the contract; or
 - iv. In contracts containing indefinite delivery provisions, a specific time for delivery after receipt by the Contractor of each individual order issued under the contract.
- C. When scheduling the time for performance of a construction contract, the Procurement Administrator shall consider applicable factors, such as the following:
 - i. The nature and complexity of the project;
 - ii. The construction seasons involved;
 - iii. The required completion date;
 - iv. The availability of materials and equipment; and v. The use of multiple completion dates.
- D. In any contract, different completion dates may be established for separable items of work. When multiple completion dates are used, the Procurement Administrator shall evaluate requests for extension of time with respect to each item, and shall modify the affected completion dates when appropriate.

4.8 When to Use a Request for Proposal (RFP)

A Request for Proposals (RFP) is the appropriate competitive selection process for Procurement Services for

goods or services when price is not the most important criteria to be considered for awarding a contract. The RFP is awarded to the supplier who best meets the qualifications and criteria specified in the RFP. It differs from a Competitive Bid because it allows more flexibility. It may involve negotiating technical requirements, scheduling, type of contract, terms and conditions, and price, including best and final offers. In contrast, a Competitive bid is awarded to the lowest responsive, responsible bidder.

4.10 RFP defined

A RFP is a solicitation document prepared by Procurement Services requesting submittal of proposals in response to the parameters and scope of services required in the document, but does not specify in detail every aspect of how to accomplish or perform the required services. Proposers are asked to submit qualifications, technical and cost information in their proposal. Proposals are evaluated based on predetermined evaluation and selection criteria stated in the RFP. The cost factor is only one evaluation criteria among several and "lowest cost" is not necessarily a determining factor in the selection process. Factors such as professional qualifications and experience of the firm or committed personnel, past performance, work or management plan, financial stability, utilization of MBE and WBE firms, in addition to other criteria, may outweigh the cost factor.

4.11 Request for Qualifications (RFQ) defined

A RFQ is a qualifications solicitation document requesting submittal of technical qualifications to determine the technical competence and expertise, including any specialized experience, of the firm and/or committed personnel. The RFQ process is used primarily to identify and /or hire professional service consultants with specialized expertise either for general assignments or project specific requirements when PBC does not have the in-house technical staff to complete the assignments.

Respondents are asked to submit resumes, technical qualifications, records of previous experience and other qualifications necessary to evaluate their technical expertise, skill and capabilities for the initial submittal. Cost proposals are not requested as part of the RFQ submittal; however general pricing information such as staff hourly fees may be submitted. Qualifications and technical competence are the primary evaluations criteria used. Proposers may be asked to conduct an oral presentation. Once a firm is qualified to perform the services, the firm is party to a Master Agreement and the 'pre-qualified pool' is utilized as set forth in the Master Agreement.

RFQ followed by an RFP, Competitive Bid Solicitation, or Letters of Interest

This method combines the RFQ with a RFP, Competitive Bid or Letters of Interest process, but in two separate invitations. First, an RFQ is advertised and respondents are requested to submit their technical proposal including experience and qualifications of the firm and key personnel. Submittals in response to the RFQ are evaluated by an Evaluation Committee, which recommends the selection of the most qualified firm(s) to the User Department.

After the pre-qualified firms have been approved by the Board, the firms are invited to respond with cost proposals when services are needed by the Board. The pre-qualified firms are the only vendors notified and allowed to submit cost proposals for these services.

This method is most commonly used for complex, large dollar design/build, public works, and capital improvement or construction projects. The most technically qualified firms on the first round are invited back to submit a cost proposal. This method may also be used to establish consistency among the pre-qualified pool of firm(s) in regard to pricing parameters. Example, if a college is engaging the services of a prequalified firm, the college can expect to receive price quotes that are both consistent with prices quoted to other colleges for similar services.

4.12 Request For information (RFI)

A Request for Information (RFI) is a general invitation to firms in the industry requesting information pertaining to state of the art technology, designs or other literature relating to products, systems or technologies for a planned project.

This method is most commonly used as a research and information gathering tool to determine the most appropriate technology for the intended application. The intent is not to award contracts through the RFI process; it is a means to gather information for RFP or RFQ development.

4.9 Liquidated Damages

If the PBC determines it is in its best interest to do so a liquidated damages clause may be used in a contract when the following factors apply:

- A. The extent or precise amount of damages would be difficult or impossible to ascertain or prove.
- B. A liquidated damages assessment must be at a specific rate per an appropriate time period and must be specified in the contract.

4.10 Request for Additional Information

In its solicitation documents, PBC may reserve the right to request additional information or seek clarification from any bidder or offeror about any statement in its bid or proposal before making an award.

4.11 Use of Options

- A. The Procurement Administrator may include an option in a contract when it is in the best interest of the PBC to include in the contract a unilateral right for a specified time by which the PBC may elect to purchase additional equipment, materials, supplies, construction or services called for by the contract, or may elect to extend the term of the contract.
- B. An advantage of awarding a contract with options is that it gives PBC a continued source of goods or services under a contract at known prices.
- C. The cost of each option shall be readily discernible from the contract provisions that set forth the option.
- D. Each contract shall state the period within which an option may be exercised. Options may not be exercised after the term of the contract has expired; technically, there is no longer a legal and binding contract to extend.
- E. The appropriate option clauses must be included in the solicitation. In order to meet the requirements of these Regulations for full and open competition, the option must be evaluated as part of the initial competition and be exercisable at an amount specified in the terms of the basic contract. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement, if appropriate.

- F. The option term(s) need not be funded at the time of contract award.
- G. Before exercising an option, the Procurement Administrator should document the contract file with:
 - i. A written determination that includes a description of the funds available and of market prices to justify price reasonableness of the option;
 - ii. A statement that the option was included in and evaluated as part of the basic contract; and
 - iii. Any other factors that support PBC's decision to exercise the option.

4.12 Solicitation Lists

PBC shall maintain solicitation mailing lists in order to identify adequate sources of goods and services and to notify Contractors of upcoming contracting opportunities.

Conducting All Procurements

4.13 Public Advertisement

- A. All solicitations to award contracts will be published at least once in an English language daily newspaper of general circulation in the Chicago metropolitan area for at least ten (10) business days, excluding Legal Holidays, in advance of the date announced for the receiving and opening of Bids or Proposals, and will simultaneously be advertised by other media, including posting on PBC's website, as appropriate.
- B. The Public Notice will describe the procurement in general terms and reference the solicitation document for the specific terms. The Public Notice will state the date, time and place Bids or Proposals are due and, for IFBs only, the time when they will be opened publicly, which must allow sufficient time to prepare bids prior to bid opening. The Public Notice can incorporate information by reference.
- C. No Bids or Proposals will be accepted at any time subsequent to the time indicated in the Public Notice. However, PBC can give notice of an extension of time for the receipt of such Bids or Proposals upon publication, in an English language daily newspaper of general circulation in the Chicago metropolitan area, and by other media, as appropriate. The notice will provide the date to which the Bid/Proposal receipt has been extended. The extended Bid or Proposal date will not be less than five (5) business days after the publication thereof, Legal Holidays excluded.
- D. If a Bid Bond is required, the Public Notice will so specify.
- E. Sole source procurements need not be formally advertised, but the Procurement Administrator must post the sole source intent on PBC's procurement website for a minimum of three (3) weeks.

- F. The contract file shall contain the following:
- i. The name and address of each prospective Bidder on the solicitation mailing list to which the solicitation was sent and additional prospective Bidders that were sent copies of the solicitation upon request;
 - ii. The name of each publication in which notice was published;
 - iii. The date on which the solicitation was issued;
 - iv. A copy of the solicitation; and
 - v. Documentation recording the name of the Bidder(s), the Bid amount, and when appropriate, whether the Bidder has acknowledged addenda to the solicitation and/or provided a Bid Guarantee.

4.14 Pre-Bid or Pre-Proposal Conferences

- A. PBC may use pre-bid or pre-proposal conferences to explain the procurement requirements. If a pre-bid or pre-proposal conference is to be held, it shall be announced to all prospective Bidders.
- B. This meeting will be scheduled no earlier than seven days after advertising. It is recommended that a two-week notice of the meeting be given and that Bids be due no earlier than two weeks after the date of the pre-bid or pre-proposal meeting.
- C. The Procurement Administrator shall do the following:
- i. Conduct the pre-bid or pre-proposal conference;
 - ii. Furnish all Bidders with identical information concerning the proposed procurement;
 - iii. Make a complete record of the conference; and
 - iv. Promptly furnish a copy of that record to all Bidders.

4.15 Cancellation of Solicitations Before Opening

- A. A solicitation shall not be canceled before opening unless the Procurement Administrator determines that cancellation is in the best interests of the PBC.
- Reasons to cancel include:
- i. Inadequate or ambiguous specifications cited in the IFB;
 - ii. Specifications have been revised;
 - iii. Supplies or services being contracted for are no longer required; or
 - iv. The IFB did not provide for consideration of all factors of cost to the PBC.
- B. If a solicitation is canceled before opening, Bids that have been received shall be returned unopened to the Bidders.
- C. The Procurement Administrator shall send a notice of cancellation to all prospective Bidders to whom solicitations were issued.

4.16 Receipt of Bids or Proposals

- A. Each Bid shall be marked with the date and time of receipt.
- B. All Bids and modifications received before the time set for the opening of Bids shall be kept secure.
- C. Bids shall be submitted so that they will be received in the Purchasing Department Bid Office not later than the submittal deadline. A Bid may be modified or withdrawn by written notice received in the Bid Office no later than the exact time set for opening of bids.
- D. Any proposal received after the time and date set for submission of offers at the PBC Bid Office shall be considered "late." Late Proposals will be rejected.
- E. The only acceptable evidence to establish the time of receipt at PBC is the PBC time and date stamp.
- F. The form of contract included in an IFB packet must be executed by the Bidder and submitted with its Bid. The method of execution must comply with section 4.26 of these Regulations.

Pre-Award Activities

4.17 Prospective Contractor Responsibility

- A. PBC shall make purchases from and award contracts only to responsible Contractors.
- B. In the absence of information clearly indicating that the prospective Contractor is responsible, PBC shall make a determination of nonresponsibility.
- C. To be determined responsible, a prospective Contractor shall meet all of the following requirements:
 - i. Financial resources adequate to perform the contract, or the ability to obtain them;
 - ii. Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
 - iii. A satisfactory performance record;
 - iv. The necessary organization, experience, accounting controls, and technical skills, or the ability to obtain them; and operational
 - v. Compliance with applicable licensing laws, if relevant;
 - vi. The necessary production, construction, and technical equipment and facilities, or the ability to obtain them;
 - vii. Compliance with the M/WBE Program requirements; and
 - viii. Other qualifications and eligibility criteria necessary to receive an award under

applicable laws and regulations.

- D. A prospective Contractor who is debarred, suspended or deemed ineligible for contracting by PBC shall not be awarded a contract.
- E. If PBC determines that the price bid or offer by a prospective Contractor is so low as to appear unreasonable or unrealistic, PBC may determine the prospective Contractor to be non-responsible.

4.18 Prospective Contractor Resources

- A. The Procurement Administrator may require, and the prospective Contractor shall promptly provide, acceptable evidence of the prospective Contractor's ability to obtain resources.
- B. Acceptable evidence of the prospective Contractor's ability to obtain resources shall consist of a commitment or explicit arrangement that will be in existence prior to the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, personnel, or other resources.
- C. A prospective Contractor that is or recently has been seriously deficient in contract performance may be presumed to be nonresponsible. PBC may determine the Contractor to be responsible if the circumstances of the prior deficiency were properly beyond the Contractor's control or if the Contractor has taken appropriate corrective action.
- D. An affiliated business shall be considered a separate entity in determining whether the business that is to perform the contract meets the applicable standards of responsibility. However, the Procurement Administrator shall consider an affiliate's past performance and integrity when they may adversely affect the prospective Contractor's responsibility.

4.19 Prospective Subcontractor Responsibility

- A. A prospective prime Contractor shall be accountable for determining the responsibility of prospective Subcontractors.
- B. Because the determination of a prospective Subcontractor's responsibility may affect the PBC's determination of the prospective prime Contractor's responsibility, a prospective Contractor may be required to provide written evidence of a proposed Subcontractor's responsibility.
- C. When it is in the interests of the PBC, PBC may independently determine a prospective Subcontractor's responsibility, using the standards and requirements for responsibility set forth in this Chapter.

4.20 Obtaining Information for Determination of Responsibility

- A. The Procurement Administrator shall obtain information regarding the responsibility of a prospective Contractor who is the apparent low Bidder or whose offer is in the competitive range.

- B. If the prospective Contractor fails to supply the information requested in the time allotted, PBC shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to make a determination of responsibility, PBC shall determine the prospective Contractor to be non-responsible.
- C. The Procurement Administrator shall place the Staff Procurement Summary Sheet (SS1), which includes a determination of contractor responsibility, in the file. Prior to contract award, the completed SS1 will constitute documentation of the determination of contractor responsibility.
- D. Contract administrators and other PBC personnel who become aware of circumstances casting doubt on a Contractor's ability to perform a contract successfully shall promptly inform the Procurement Administrator and furnish the relevant information in writing.

4.21 Determinations and Documentation of Responsibility

- A. PBC's execution of a contract shall constitute a determination that the prospective Contractor is responsible with respect to that contract.
- B. When an offer on which an award would otherwise be made is rejected because the prospective Contractor is found to be non-responsible, the Procurement Administrator shall make, sign, and place in the contract file a determination of non-responsibility, which shall state the basis for the determination, and include any applicable information from M/WBE and other PBC departments.

4.22 Disclosure and Use of Information Before Award

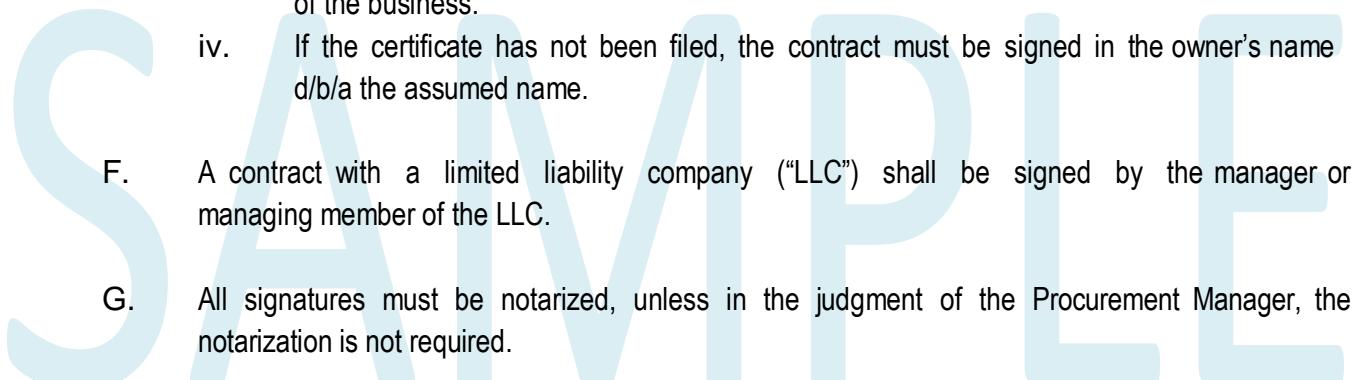
- A. After receipt of Proposals in response to an RFP or LIQ, the information contained in the Proposals and the number or identity of Proposers shall not be made available to the public or to anyone in the PBC not required to have access to the information in the performance of his or her duties.
- B. During the pre-award period of any competitive procurement, only the Procurement Administrator and others specifically authorized may transmit technical or other information and conduct discussions with prospective Contractors. No PBC employee or agent shall furnish information to a prospective Contractor if, alone or together with other information, it might give the prospective Contractor an advantage over others. However, general information that is not prejudicial to others may be furnished upon request.

4.23 Cancellation of Procurements – Rejection of Bids

The Procurement Manager, in consultation with a using department, has the authority to cancel any procurement or reject any or all Bids. A written notification of all canceled procurements or rejected Bids will be provided to the Chairman and President as requested.

4.24 Method of Contract Execution by Bidders or Proposers

- A. A contract with a partnership shall be signed by all partners or by a general partner with authority to bind the partnership.

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- B. A contract with a corporation shall be signed by the President or Vice President or, with appropriate authorizing documentation, another employee or officer of the corporation.
 - C. A contract with joint venturers may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner set forth in this section with a copy of the joint venture agreement attached.
 - D. A contract with a sole proprietorship shall be signed by the owner of the company.
 - E. For contracts under an assumed name:
 - i. The persons conducting business under the assumed name must file the required certificate in the Office of the County Clerk of the county where business will be transacted.
 - ii. The Procurement Administrator should verify that the required certificate has been filed.
 - iii. If the certificate has been filed, the contract may be signed in the assumed name of the business.
 - iv. If the certificate has not been filed, the contract must be signed in the owner's name d/b/a the assumed name.
 - F. A contract with a limited liability company ("LLC") shall be signed by the manager or managing member of the LLC.
 - G. All signatures must be notarized, unless in the judgment of the Procurement Manager, the notarization is not required.

4.25 Adequate Competition

The Procurement Administrator must establish that there is adequate competition. Establishing adequate competition requires two or more responsible Bidders willing and able to compete effectively for the business. Upon receiving a single bid or proposal in response to a solicitation, the Procurement Administrator should determine if competition was adequate. This includes a review of the specifications for undue restrictiveness and may also include a survey of potential sources that chose not to submit a bid or proposal. Any supporting documentation used to make a determination of adequate competition in the event of a single bid or proposal must be included in the contract file.

4.26 Determination of Reasonable Price

- A. Before award can be made to a particular Contractor, the Procurement Administrator or Buyer in conjunction with the requesting department shall perform a price analysis or reasonableness checklist to determine, in writing, that the Contractor's proposed price is fair and reasonable.
- B. When there is only one response received to a request for quotation or Solicitation, or the price variance between multiple responses reflects a lack of robust competition, the Procurement Administrator or Buyer shall include a statement in the contract file giving the basis for the determination of a fair and reasonable price.
- C. The determination that a proposed price is fair and reasonable may be based on either of the following:
 - i. Competitive quotation or Solicitation; or
 - ii. Comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items, value analysis, the Procurement Administrator or Buyer's personal knowledge of the item being purchased, or by reference or comparison to any other reasonable price source.
- D. When adequate competition is lacking and for sole source purchases, a cost analysis or reasonableness checklist may be necessary to determine price reasonableness.

Post-Award Activities

4.27 Contract Administration

PBC maintains a contract system to ensure that Vendors perform in accordance with the terms, conditions and specifications of their

contracts or purchase orders. Upon execution of the contract, Purchasing will notify the using department of the start of the contract administration duties. The actions of Contract administration will be the responsibility of the Contract/Project Manager (the “Contract Manager”) who utilizes the contracts on a day to day basis in each of their respective departments.

A. Commencement of Contract Administration Responsibility

The Contract Manager’s responsibility begins when a Contract is executed. If the Contract is a Blanket Contract, then a delegation letter will be sent to the Contract Manager. The Contract Manager must sign and return the letter to the Purchasing Department within 10 business days. If the Contract is not a Blanket Contract, then a copy of the Purchase Order and a copy of the Contract will be sent to the Contract Manager in lieu of a delegation letter.

B. Contract Manager Responsibilities

The Contract Manager will take the following actions once a Contract is executed and awarded by the PBC:

- i. Review the Contract information recorded in Oracle to ensure that it is accurate and notify the Purchasing Department of any inaccuracies;
- ii. Notify the Contractor that it may begin performing the work, if applicable;
- iii. Place orders for goods and services against the Contract as needed;
- iv. Review and approve logs/reports/schedules/etc., if applicable;
- v. Review and accept deliverables to ensure that they conform to the Contract requirements;
- vi. Review invoices via Oracle in a timely manner and authorize payment of accurate invoices;
- vii. Notify the Contractor if invoices are inaccurate, and obtain accurate invoices from the Contractor;
- viii. Coordinate with Accounts Payable to ensure that accurate invoices are paid and inaccurate invoices are not paid;
- ix. Verify that all work is performed and all goods are delivered within the Contract term;
- x. Monitor available funds to ensure that the Contract value is not exceeded;
- xi. Notify the Purchasing Department if Contract changes are necessary, including if additional funds are needed, and follow the procedures for Contract changes set forth in these regulations;
- xii. Close out the Contract by notifying the Purchasing Department that all services have been performed or all goods delivered;
- xiii. Maintain an accurate record of all Contract administration activities; and
- xiv. Direct any questions regarding Contract administration to the General Manager, Purchasing.

C. Prohibited Actions

Unless the Contract expressly authorizes otherwise, the Contract Manager **may not** take the following actions:

- i. Direct the Contractor to perform work or deliver any goods that are not specified in the Contract;
- ii. Authorize payment for goods or services that are not included in the Contract;
- iii. Expend more than the Contract value; or
- iv. Modify the Contract without following the procedures set forth in these regulations.

4.28 Contract Distribution

The Procurement Administrator shall distribute copies of contracts or modifications to the Contractor within ten (10) working days after execution by all parties.

4.29 Post-Award Conference

A. If the Procurement Administrator decides that a post award conference is needed, he or she shall be responsible for the following:

- i. Establishing the time and place of the conference;
- ii. Preparing the agenda, when necessary;
- iii. Notifying appropriate PBC representatives;
- iv. Notifying appropriate Contractor representatives;
- v. Designating or acting as chairperson;
- vi. Conducting a preliminary meeting of other PBC personnel, if necessary; and
- vii. Preparing a summary report of the conference.

B. It is the policy of the PBC to conduct a "preconstruction meeting" with all construction Contractors before the work under a construction contract begins. Such a meeting provides key members of both PBC and the Contractor with an opportunity to establish lines of authority and communication and identify their respective duties and responsibilities. Discussions may also cover specific projects, plans, specifications, safety requirements, unusual conditions, and schedules of completion. A thorough understanding of equal employment regulations, civil rights requirements, and other pertinent features of the contract will promote better relations and improve construction operations.

4.30 Contract Compliance

The Procurement Administrator shall ensure that the goods, services, or construction procured under each PBC contract conform to the quality, safety and quantity requirements of the contract, including inspection, acceptance, warranty, and any other measures associated with quality assurance.

4.31 Subcontracts

- A. The Procurement Administrator may require the Contractor to obtain consent for any or all subcontracting in any instance where the Procurement Administrator determines that it would be in the best interests of the PBC.
- B. In determining whether to require consent to subcontract, the Procurement Administrator shall consider the following:
 - i. The complexity of the work to be done under subcontracts;
 - ii. The value of the subcontract(s);
 - iii. Whether the PBC's interests can be adequately protected without requiring consent; and
 - iv. Any other relevant factors.
- C. Upon receipt of the Contractor's request for consent to subcontract, the Procurement Administrator shall do the following:
 - i. Promptly evaluate the Contractor's request for consent to subcontract;
 - ii. Obtain assistance in the evaluation from audit, pricing, technical, or other specialists as necessary; and
 - iii. Notify the Contractor in writing of consent to subcontract or the withholding of consent to subcontract, including any changes or corrections required.

4.32 Contract Changes

- A. All Change Orders and Contract Amendments shall be within the general scope of the contract and cannot represent cardinal changes to the contract. The Procurement Administrator shall review and verify that the changed work is not a cardinal change to the contract. In the event the change will be a cardinal change to the contract, the work must be publicly solicited as a separate contract and cannot be undertaken as a change to a current contract.
- B. Change Orders and Contract Amendments involve changes within the scope of the contract which require a modification to the contract.
- C. Payment is not authorized until the Change Orders has been approved.
- D. The process for Change Orders and Contract Amendments set forth in the following sections will be utilized by PBC.

4.33 Change Order Procedures

Change Orders result from the following process:

- A. The using department determines that a Change Order is necessary and makes a written request to the Contractor for a Change Order proposal. The Contractor responds in writing to the using department's request. Said response will include the Contractor's costs, actual or estimated, and any requests for time extensions;
- B. The using department and the Contractor negotiate an acceptable price and, if applicable, a time extension amount, in accordance with the budgetary constraints, if any, set forth by the Office of Finance;
- C. The using department/Procurement Office prepares a written change order and submits it to the Administrative and Procurement Services for review;
- D. The change order will be given to the General Counsel for execution. Upon execution of the Change Order, the Procurement Administrator will follow the appropriate procedures depending on the dollar amount to obtain approval. For change orders or series of change orders on the same contract that increase or decrease the contract price by more than \$10,000 or that extend the time for completion by 30 days or more, the statute currently requires a determination that:
 - i. the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was executed; or
 - ii. the change is germane to the original contract as signed; or
 - iii. the Change Order is in the best interest of PBC and authorized by law.
- E. Board authorization is required for Change Orders to contracts originally valued at 10%.
- F. An executed copy of the Change Order will be transmitted to the Contractor by the Procurement Administrator.

4.34 Contract Amendment Procedures

Contract Amendments result from the following process:

- A. The using department determines that a change is required to a contract and contacts the Purchasing Administrator and the Contractor to negotiate the terms of the change needed, including an acceptable price and time extension, if any.
- B. The Purchasing Administrator in conjunction with the Law Department prepares a Contract Amendment for review by the Contractor.
- C. Once a contract amendment acceptable to the Authority and the Contractor has been drafted, it is ready for signature by both parties. Contracts that required board authorization will require board authorization to amend, unless in the judgment

of the Procurement Manager, the contract, or the nature of the amendment thereof, is otherwise of such a nature that Board approval is not necessary, after consultation with the General Counsel.

4.35 Assignment of Contracts

No contracts, inclusive of leases and concessions, will be assigned or sublet without Board authorization, unless in the judgment of the Vice President, Purchasing & Supply Chain, the contract, or the nature of the assignment or sublease thereof, is otherwise of such a nature that Board approval is not necessary, after consultation with the General Counsel.

Assignment of funds must be authorized by the Procurement Manager after consultation with the General Counsel.

4.36 Change In Ownership

Any Vendor who changes ownership during the performance of a contract must submit an updated ownership disclosure to the Procurement Manager for approval, within 30 days. A change of ownership will not require an assignment of the contract unless the contracting entity itself is changed.

4.37 Termination

- A. Termination for Convenience
 - i. All federally funded contracts must contain provisions enabling PBC to terminate such contracts for the convenience of PBC. These provisions shall specify the manner in which such termination will be effected and the basis for settlement of any outstanding bills or costs.
 - ii. PBC contracts will be terminated for convenience only when determined to be in the best interests of PBC. Formal written notice to the Contractor is necessary to terminate a contract for convenience. Such notice will state that the contract is being terminated pursuant to the termination for convenience provision of the contract, the effective date, the extent of termination, and instruct the Contractor to cease performance under the contract.
 - iii. The Procurement Administrator will negotiate a no-cost settlement with the Contractor if possible. Otherwise, the Procurement Administrator will negotiate an appropriate settlement agreement with the Contractor pursuant to the provisions of the termination for convenience clause of the contract.
- B. Termination for Default
 - i. All federally funded contracts must contain provisions enabling PBC to terminate for cause if the Contractor defaults in one of more of the enumerated manners set forth in the contract.
 - ii. If a Contractor's right to proceed is terminated for default, PBC may take over and complete the work or cause it to be completed, and the Contractor and its sureties, if any, shall be liable to PBC for any increased costs caused thereby. The Contractor and its sureties shall, in addition to increased

costs in completing the work, be liable for liquidated damages, if liquidated damages are provided for in the contract, or for actual damages, if liquidated damages are not so provided.

- iii. If the Procurement Administrator determines that the Contractor's failure to perform arises from causes which are excusable under the terms of the contract, the Procurement Administrator shall not terminate the Contractor's right to proceed, nor shall he/she charge the Contractor with damages because of any delays occasioned by such causes.
- iv. Where a surety does not complete performance of the contract, the Procurement Administrator may complete the performance of work by awarding a new contract based on the same plans and specifications. Such award may be the result of competitive bidding or negotiation, whichever procedure is most appropriate under the circumstances. The Procurement Administrator must use reasonable diligence to obtain the lowest price available for completion.
- v. If, after due consideration, the Procurement Administrator determines that termination is not in the best interest of PBC although the Contractor is in default, the Procurement Administrator may permit the Contractor to continue the work, and the Contractor and its sureties shall be liable to the PBC for liquidated damages, as specified in the contract, or if liquidated damages are not so specified, for any actual damages occasioned by the failure of the Contractor to complete the work in accordance with the terms of the contract.

4.38 Closeout of Contracts

- A. Small purchase files shall be considered closed when the Procurement Administrator receives evidence of receipt of property and final payment.
- B. Files for all contracts shall be closed in a timely fashion and as business appropriate.
- C. The Procurement Administrator shall ensure that all required contractual actions have been completed.
- D. PBC will retain all contracts for at least three years following the final close out of grant funded contracts or (2) contract expiration or termination.

Chapter 5: Contracting with Minority and Women Owned Business Enterprises (M/WBE)

ARTICLE 2. MBE/WBE SPECIAL CONDITIONS

SECTION 23.01 MBE/WBE Program

1. Policy Statement

- a. It is the policy of the Commission to ensure competitive business opportunities for MBE and WBE firms in the performance of Contracts, to prohibit discrimination in the award of or participation in Contracts, and to abolish arbitrary barriers to full participation in Contracts by all persons, regardless of race, sex or ethnicity. Therefore, during the performance of this Contract, the Contractor must agree that it will not discriminate

against any person or business on the basis of race, color, religion, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military service, parental status, sexual orientation, national origin or sex, in the solicitation or the purchase of goods and services or the subcontracting of work in the performance of this Contract.

- b. The Commission requires the Contractor also agree to take affirmative action to ensure that MBE and WBE firms have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.
- c. The Commission requires the Contractor to notify MBE and WBE firms, utilized on this contract, about opportunities on contracts without affirmative action goals.

2. Aspirational Goals

- a. Upon the effective date of these Special Conditions, the bi-annual aspirational goals are to award twenty-six percent (26%) of the annual dollar value of all Commission Construction Contracts to MBEs and six percent (6%) of the annual dollar value of all Commission Construction Contracts to WBEs.
- b. The contract specific goals for this project are 26% for MBE and 6% for WBE respectively.
- c. Further, the Contractor must agree to use its best efforts to include MBE and WBE firms in any Contract Modification work that increases the Contract value by ten percent (10%) of the initial Contract value or \$50,000, whichever is less. Where the proposed contract modification involves work which can be performed by MBEs and WBEs already performing work on the contract, such MBEs and WBEs will participate in such work specified in the contract modification.
- d. Failure to carry out the commitments and policies set forth in this Program constitute a material breach of contract and may result in termination of the Contractor or such other remedy, as the Commission deems appropriate.

3. Definitions

- a. For purposes of this Special Condition, the following definitions applies:
 - (1) "Certified Minority Business Enterprise" means a person or entity granted certification by the City of Chicago or County of Cook.
 - (2) "Certified Women's Business Enterprise" means a person or entity granted certification by the City of Chicago or County of Cook.
 - (3) "Construction Contract" means a contract for the construction, repair, alteration, renovation or improvement of any building, facility or other structure.
 - (4) "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract based upon the availability of MBEs and WBEs to perform any anticipated scope of work of the contract and the Commission's progress towards meeting the aspirational goals.
 - (5) "Contractor" means any person or business entity that seeks to enter into a Construction Contract with the Commission and includes all partners, affiliates and joint ventures of such person or entity.
 - (6) "Established Business" means a person or entity granted certification by the City of Chicago.
 - (7) "Executive Director" means the Executive Director of the Commission or his/her duly designated representative as appointed in writing.
 - (8) "Good faith efforts" means actions undertaken by a Contractor to achieve a Contract Specific Goal that by their scope, intensity and appropriateness to the objective can reasonably be expected to fulfill the Program's requirements.
 - (9) "Joint venture" means an association of two or more persons or entities or any combination of two or more business enterprises and persons numbering two or more, proposing to perform a single for-profit business

enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly-defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the parties and their relationship and responsibilities to the contract.

(10) "Participating Established Business" means an established business which is eligible to participate in the minority- and women-owned business enterprise program set forth in Section 23.01.8.

(11) "Program" means the minority- and women-owned business enterprise construction procurement program established in this special condition.

4. Determining MBE/WBE Utilization

- a. The methodology for determining MBE and WBE utilization will be determined for purposes of analysis with respect to this contract as follows:
 - b. The total dollar value of the contract awarded to the certified MBE or WBE firm will be credited to such participation. Only minority business participation may be counted toward MBE participation and only women business participation may be counted toward WBE participation.
 - c. The total dollar value of a contract with a firm owned and controlled by minority women is counted toward either the MBE or WBE goal, but not both. The Contractor employing the firm may choose the goal to which the contract value is applied. Various work done by one and the same subcontractor will be considered, for the purpose of this principle, as work effectively done under one subcontract only, which subcontractor may be counted toward only one of the goals, not toward both.
 - d. A Contractor may count toward its MBE or WBE goal the portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the MBE or WBE partner in the joint venture. A joint venture seeking to be credited for MBE participation may be formed among certified MBE and WBE firms, or between certified MBE and WBE firms and a non-MBE/WBE firm. A joint venture satisfies the eligibility standards of this Program if the certified MBE or WBE participant of the joint venture:

- (1) Shares in the ownership, control, management responsibilities, risks and profits of the joint venture; and
- (2) Is responsible for a clearly defined portion of work to be performed in proportion to the MBE or WBE ownership percentage.

- e. A Contractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially useful function in the work of a contract. A firm is considered to perform a commercially-useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, the Commission will evaluate the amount of work subcontracted, industry practices and other relevant factors.
- f. Consistent with normal industry practices, a MBE or WBE firm may enter into subcontracts. If a MBE or WBE contractor subcontracts a significantly greater portion of the work of a contract than would be expected on the basis of normal industry practices, the MBE or WBE will be rebuttably presumed not to be performing a commercially-useful function.
- g. If the MBE or WBE is a manufacturer:
 - (1) One hundred percent (100%) of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the MBE or WBE goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies articles, or equipment required under the Contract and of the general character described by ~~§3~~ specifications.
- h. If the MBE or WBE is a distributor or supplier:

- (1) Sixty percent (60%) of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward MBE or WBE goals.
- (2) A Contractor may count toward its goals expenditures to MBE or WBE suppliers provided that the supplier performs a commercially useful function in the supply process. Expenditures to suppliers will only be counted if the supplies are sold to the contractor that installs those supplies in the Work.

i. If the MBE or WBE is a broker:

- (1) Zero percent (0%) of expenditures paid to brokers will be counted toward the MBE or WBE goals.

5. Submission of Bid Proposals

- a. The following schedules and documents constitute the Bidder's MBE/WBE compliance proposal and must be submitted at the time of the bid or proposal or within such extended period as provided in Article 23.
 - (1) Evidence of Certification: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the City of Chicago, Department of Procurement Services or any other entity listed in Section 23.01.3.a (1) or 23.01.3.a (2) must be submitted.
 - (2) Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Ventures. Where the Bidder's MBE/WBE compliance proposal includes participation of any MBE or WBE as a joint venture participant, the Bidder must submit a "Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Venture" with an attached copy of the joint venture agreement proposed among the parties. The Schedule B and the joint venture agreement must clearly evidence that the MBE or WBE participant will be responsible for a clearly defined portion of the work to be performed and that the MBE or WBE firm's responsibilities are in proportion with its ownership percentage.
 - (3) Schedule C: Letter of Intent to Perform as a Subcontractor, Subconsultant, or Material Supplier, Schedule C, executed by the MBE/WBE firm (or Joint Venture Subcontractor) must be submitted by the Bidder for each MBE/WBE included on the Schedule D. Schedule C must accurately detail the work to be performed by the MBE or WBE firm and the agreed rates and prices to be paid.
 - (4) Schedule D: Affidavit of Prime Contractor Regarding MBE or WBE Utilization. A completed Schedule D committing to the utilization of each listed MBE or WBE firm. Unless the Bidder has submitted a completed request for a waiver of participation by MBE/WBE firms (See Request for Waiver procedures in Section 23.01.7), the Bidder must include the specific dollar amount of participation of each MBE/WBE firm listed on its Schedule D. The total dollar commitment to proposed MBE firms must at least equal the MBE goal, and the total dollar commitment to proposed WBE firms must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of MBE or WBE utilization as percentages of their total base bid.
- b. The submittals must have all blank spaces on the Schedule pages applicable to the contract correctly filled in. Agreements between a Bidder and a MBE/WBE in which the MBE/WBE promises not to provide subcontracting quotations to other Bidders are prohibited.

6. Evaluation of Compliance Proposals

- a. During the period between bid opening and contract award, the Bidder's MBE/WBE compliance proposal will be evaluated by the Commission. The Bidder agrees to provide, upon request, earnest and prompt cooperation to the Executive Director in submitting to interviews that may be necessary, in allowing entry to places of business, in providing further documentation, or in soliciting the cooperation of a proposed MBE or WBE firm in providing such assistance. A bid may be treated as non-responsive by reason of the determination that the Bidder's proposal did not contain a sufficient level of Certified MBE or WBE participation, that the Bidder was unresponsive or uncooperative when asked for further information relative to the proposal, or that false statements were made in the Schedules.
- b. If the Commission's review of a Bidder's proposal concludes that the MBE or WBE proposal was deficient, the Commission will promptly notify the Bidder of the apparent deficiency and instruct the Bidder to submit

(within three (3) business days of such notice given by the Commission) a modification of the MBE or WBE Proposal, in proper format, which remedies the deficiencies cited. Failure to correct all deficiencies cited by the Commission will be cause for rejection of the Bidder's proposal as non-responsive.

- c. Bidders will not be permitted to modify their MBE/WBE compliance proposal except insofar as directed to do so by the Commission. Therefore, all terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers should be satisfactorily negotiated prior to the submission to the Commission of the Bidder's MBE/WBE compliance proposal with the bid. If circumstances should arise, however, where a proposed MBE/WBE is no longer available, the process described in Section 23.01.13 should be followed.
- d. If the Compliance Proposal includes participation by material suppliers, the PBC will request copies of the offers from such suppliers. The offers must be furnished to the PBC within three (3) business days of the bidder's receipt of the request for such offers from the PBC. The PBC may make such request by electronic mail. The offers must specify: (i) the particular materials, equipment and/or supplies that will be furnished; (ii) the supplier's price for each of the items; (iii) the total price of the items to be furnished by the supplier, (iv) the supplier's source for the items (e.g., manufacturer, wholesaler) and (v) the subcontractor that the supplies will be purchased by.

7. Request for Waiver

- a. If a Bidder is unable to identify qualified MBE and WBE firms to perform sufficient work to fulfill the MBE or WBE percentage goals for this Contract, the bid or proposal must include a written request for waiver. A request for waiver must be sent to the Executive Director and must set forth the Bidder's inability to obtain sufficient MBE and WBE firms notwithstanding good faith attempts to achieve such participation.
- b. Good Faith efforts to achieve participation include but are not limited to:
 - (1) Attendance at the Pre-bid conference;
 - (2) Solicit certified MBE and WBE firms. Soliciting through reasonable and available means at least 50% of MBE and WBE firms certified in the anticipated scope(s) of work.
 - (3) The Bidder's general affirmative action policies regarding the utilization of MBE and WBE firms, plus a description of the methods used to carry out those policies;
 - (4) Advertise the contract opportunity in trade association newsletters, other media, and/or venues oriented toward and minority and woman-oriented;
 - (5) Timely notification (at least seven (7) days in advance of the bid due date) of specific sub-bid opportunities must be made to MBE and WBE firms and corresponding assistance agencies/ associations;
 - (6) Provide interested MBE and WBE firms with adequate information regarding the plans, specifications, and contract requirements in a timely manner;
 - (7) Make efforts to assist interested MBE and WBE firms in obtaining bonding, lines of credit, or insurance;
 - (8) Make efforts to assist interested MBE and WBE firms in obtaining necessary equipment, supplies, materials, or related assistance/services;
 - (9) Effectively use the services of the City; minority or women community organizations/assistance groups, and other organizations to provide assistance in the recruitment and placement of MBE and WBE firms.
 - (10) Negotiate in good faith with interested MBE/WBE firms and provide a description of direct negotiations with MBE and WBE firms for specific sub-bids, including:
 - i. The name, address and telephone number of MBE and WBE firms contacted;
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 - ii. A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and
 - iii. The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.

- (11) A statement of the efforts made to select portions of the work proposed to be performed by MBE and WBE firms (such as sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract) in order to increase the likelihood of achieving sub participation;
- (12) Decision to reject MBE and WBE firms deemed unqualified must be sound and based on a thorough investigation of firms capabilities. As to each MBE and WBE contacted which the Bidder considers to be not qualified, a detailed statement of the reasons for the Bidder's conclusion;
- (13) Efforts made by the Bidder to expand its search for MBE and/or WBE firms beyond usual geographic boundaries.
- (14) Must take appropriate, documented steps to follow up initial solicitations with interested MBE and WBE firms.
- (15) General efforts made to assist MBE and WBE firms to overcome participation barriers.

c. The Executive Director, after review and evaluation of the request provided by the Bidder, may grant a waiver request upon the determination that:

- (1) Sufficient qualified MBE and/or WBE firms capable of providing the goods or services required by the contract are unavailable despite the good faith efforts of the Bidder;
- (2) The price(s) quoted by potential MBE and/or WBE firms for goods or services is above competitive levels to an extent unwarranted by any increased cost of doing business attributable to the present effects of disadvantage or discrimination.

8. Established Business Participation in the MBE and WBE Procurement Program

- a. A local business entity which meets all the requirements to be certified as an MBE or WBE under this article except that it has become an established business may participate in the minority- and women-owned business enterprise program as follows:
- (1) For a one-year period after the business entity has become an established business, only 75 percent of such business's participation in the Contract shall account for the MBE or WBE, as applicable, participation requirement set forth in Section 23.01.4;
- (2) For a one-year period starting on the one-year anniversary of the date the business entity became an established business, only 50 percent of such business's participation in the Contract shall account for the MBE or WBE, as applicable, participation requirement set forth in Section 23.01.4.
- (3) For a one-year period starting on the two-year anniversary of the date the business entity became an established business, only 25 percent of such business's participation in the Contract shall account for the MBE or WBE, as applicable, participation requirement set forth in Section 23.01.4.
- b. An Establish Business entity shall not be eligible to participate in the minority- and women-owned business enterprise procurement program starting on the three-year anniversary of the date the business entity became an established business.

9. Failure to Achieve Goals

- a. If the Contractor cannot achieve the contract specific goals, as the Project proceeds, it must have documented its good faith efforts to do so. In determining whether the contractor has made such good faith efforts, the performance of other contractors in meeting the goals may be considered. The Executive Director shall consider, at a minimum, the Contractor's efforts to do the following:

- (1) Soliciting through reasonable and available means the interest of MBEs or WBEs that provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.

- (2) Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
- (3) Negotiating in good faith with interested MBEs or WBEs that have submitted bids. Documentation of negotiation must include the names, addresses and telephone numbers of MBEs or WBEs that were solicited; the date of each such solicitation; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached with MBEs or WBEs to perform the work. That there may be some additional costs involved in solicitation and using MBEs and WBEs is not a sufficient reason for a contractor's failure to meet the goals, as long as such costs are reasonable.
- (4) Not rejecting MBEs or WBEs as being unqualified without sound reasons based on the thorough investigation of their capabilities. The MBEs' or WBEs' standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate cases for rejecting or not soliciting bids to meet the goals.
- (5) Making a portion of the work available to MBE or WBE subcontractors and suppliers and to select those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the goals.
- (6) Making good faith efforts despite the ability or desire of a Contractor to perform the work of a contract with its own organization. A Contractor that desires to self-perform the work of a contract must demonstrate good faith efforts unless the goals have been met.
- (7) Selecting portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation even when the Contract might otherwise prefer to perform these items with its own forces.
- (8) Making efforts to assist interested MBEs or WBEs in obtaining bonding lines of credit or insurance as required by the Commission or Contractor.
- (9) Making efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials or related assistance or services, including participation in a mentor-protégée program; and
- (10) Effectively using the services of the Commission; minority or women community organizations; minority or women contractors' groups; local, state and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- b. In the event the Public Building Commission Procurement Officer determines that the Contractor did not make a good faith effort to achieve the goals, the Contractor may file a Dispute to the Executive Director as provided in Section 18.02 Disputes.

10. Reporting and Record-Keeping Requirements

- a. The Contractor, within five (5) working days of contract award, must execute a formal subcontract or purchase order in compliance with the terms of the Contractor's bid proposal and MBE/WBE assurances, and submit to the Commission a copy of the MBE and WBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the MBE and WBE firms. During the performance of the contract, the Contractor will submit waivers of lien from MBE and WBE subcontractors and suppliers indicating the current payment amount and the cumulative dollar amount of payments made to date. The Contractor will file regular MBE and WBE utilization reports on the form entitled "Status Report of MBE and WBE (Sub) Contract Payments" at the time of submitting each monthly Payment Estimate, which reflects the current status of cumulative and projected payments to MBE and WBE firms.
- b. The Contractor must maintain records of all relevant data with respect to the utilization of MBE and WBE firms, including without limitation payroll records, tax returns and records, and books of account in such detail as the Commission requires, and retain such records for a period of at least three (3) years after Final Acceptance of the Work. Full access to such records will be granted to the Commission and/or its designees, on five (5) business days' notice in order for the Commission to determine the Contractor's compliance with its MBE and WBE commitments and the status of any MBE or WBE firm performing any

portion of the contract.

11. Disqualification of MBE or WBE

- a. The Contract may be terminated by the Executive Director upon the disqualification of the Contractor as an MBE or WBE if the Contractor's status as an MBE or WBE was a factor in the award and such status was misrepresented by the Contractor.
- b. The Contract may be terminated by the Executive Director upon the disqualification of any MBE or WBE if the Subcontractor's or supplier's status as an MBE or WBE was a factor in the award of the contract and the status of the subcontractor or supplier was misrepresented by the Contractor. If the Contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the Contractor shall make good faith efforts to engage a qualified MBE or WBE replacement.

12. Prohibition on Changes to MBE/WBE Commitments

- a. The Contractor must not make changes to its contractual MBE and WBE commitments or substitute such MBE or WBE subcontractors without the prior written approval of the Executive Director. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Contractor's own forces, is a violation of this section and a breach of the contract with the Commission, and may cause termination of the contract for breach, and/or subject the Contractor to contract remedies or other sanctions. The facts supporting the request must not have been known nor reasonably should have been known by the parties prior to entering into the subcontract.

13. MBE/WBE Substitution Requirements and Procedures

- a. Arbitrary changes by the Contractor of the commitments earlier certified in the Schedule D are prohibited. Further, after once entering into each approved MBE and WBE sub-contract agreement, the Contractor shall thereafter neither terminate the subcontract, nor reduce the scope of the work to be performed by the MBE or WBE, nor decrease the price to the MBE or WBE, without in each instance receiving the prior written approval of the Executive Director. In some cases, however, it may become necessary to substitute a new MBE or WBE in order to actually fulfill the MBE or WBE requirements. In such cases, the Executive Director must be given reasons justifying the release by the Contractor of prior specific MBE or WBE commitments established in the contract, and will need to review the eligibility of the MBE or WBE presented as a substitute. The substitution procedure will be as follows:
 - (1) If needed and in order to sustain the fulfillment of the MBE/WBE contract requirements, the Contractor must notify the Executive Director immediately in writing of an apparent necessity to reduce or terminate a MBE or WBE subcontract and to propose a substitute firm for some phase of work.
 - (2) The Contractor's notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include any of the following reasons: a) unavailability after receipt of reasonable Notice to Proceed; b) failure of performance; c) financial incapacity; d) refusal by the subcontractor to honor the bid or proposal price or scope; e) mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed; f) failure of the subcontractor to meet insurance, licensing or bonding requirements; g) the subcontractor's withdrawal of its bid or proposal; or h) decertification of the subcontractor as MBE or WBE.
 - (3) The Contractor's position must be fully explained and supported with adequate documentation. Stated reasons which will not be acceptable include: replacement firm has been recruited to perform the same work under terms more advantageous to the Contractor; issues about performance by the committed MBE or WBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); an MBE or WBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.
 - (4) The Contractor's notification should include the names, address and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same MBE/WBE affidavits, documents and Letters of Intent which are required of the proposed MBE or WBE firms, as enumerated above in Section 23.05 Submission of Bid Proposals.

- (5) The Executive Director will evaluate the submitted documentation, and respond within fifteen (15) business days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the Executive Director will instead respond as soon as practicable.
- (6) Actual substitution of a replacement MBE or WBE to fulfill contract requirements must not be made before the Executive Director's approval is given of the acceptability of the substitute MBE or WBE. This subcontract must be executed within five (5) business days, and a copy of the MBE WBE subcontract with signatures of both parties to the agreement should be submitted immediately to the Executive Director.
 - i. The Executive Director will not approve extra payment for escalated costs incurred by the Contractor when a substitution of subcontractors becomes necessary for the Contractor in order to comply with MBE/WBE contract requirements.
 - ii. No relief of the MBE/WBE requirements will be granted by the Executive Director except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Contractor to locate specific firms, solicit MBE and WBE bids, seek assistance from technical assistance agencies, and other good faith efforts undertaken to achieve compliance with the MBE/WBE goals.

14. Non-Compliance

- a. The Executive Director has the authority to apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the MBE and WBE requirements. Failure to comply with the MBE or WBE terms of this contract or failure to use MBE or WBE firms as stated in the Contractor's assurances constitutes a material breach of the contract, and may lead to the suspension or termination of the contract in part or in whole. In some cases, monthly progress payments may be withheld until corrective action is taken.
- b. When the contract is completed, if the Executive Director has determined that the contractor did not comply in the fulfillment of the required MBE and/or WBE goals, and a grant of relief of the requirements was not obtained, the Commission will be damaged in the failure to provide the benefit of participation to minority or women business to the degree set forth in this Special Condition. In that case, the Commission may disqualify the Contractor from entering into future contracts with the Commission.

15. Severability

- a. If any section, subsection, paragraph, clause, provision or application of these Special Conditions is held invalid by any court, the invalidity of such section, paragraph, clause or provision will not affect any of the remaining provisions hereof.

5.1 Proposed Contract Review

All contracts in excess of \$25,000 will be reviewed by the Office on Contract Compliance to determine if the contract has subcontracting opportunities, unless in the judgment of the General Manager, M/WBE review is not required. If so, the Office on Contract Compliance will determine whether to assign a contract specific M/WBE goal to it. The M/WBE contract goal, if any, will be included in the solicitation documents.

- A. The Procurement Administrator will request that the Office of Contract Compliance review all proposed solicitations prior to advertisement to determine the contract specific M/WBE goal, if any.
- B. The Office of Contract Compliance will promptly provide documentation to the

Procurement Administrator with the contract M/WBE goal or with its written decision not to put a M/WBE goal on the proposed contract.

5.2 Participation

- A. For competitively bid contracts of \$25,000 or less, the Buyer will use its best efforts to provide M/WBEs, provided those M/WBEs are registered in the PBC Vendor Database, with the maximum opportunity to participate in such contracts. The user department will solicit at least one, and if available multiple, M/WBEs on the RFQs.
- B. For competitively bid contracts in excess of \$40,000, the Procurement Administrator will forward information regarding the Bidders' or Proposers' good faith efforts to comply with the M/WBE contract goal to the M/WBE Department, which will determine compliance with the M/WBE contract goal, and forward its determination to the Procurement Administrator prior to contract award.
- C. Compliance with the M/WBE contract goal, if any, on IFBs is a matter of Bidder responsiveness. PBC will not award a contract to any Bidder who has not demonstrated good faith efforts to meet the goal at the time of submitting its bid.
- D. Compliance with the M/WBE contract goal, if any, on RFPs and LIQs is a matter of responsibility. PBC will not award a contract to any Proposer who does not show good faith efforts to meet the goal by the time of contract award.

5.3 Good Faith Efforts

- A. Compliance with the M/WBE contract goal may be achieved by a Bidder or Proposer's demonstration of good faith efforts to meet the contract M/WBE goal through any one of the following:
 - i. A non-M/WBE Contractor subcontracting for a portion of the work sufficient to meet the M/WBE contract goal with a M/WBE company certified by one of the accepted certifying agencies for PBC, whose proposed work on the contract being evaluated will serve a commercially useful purpose; or
 - ii. Performance of the contract by a certified M/WBE in its area of certification; or
 - iii. A non-M/WBE Contractor who does not meet the full M/WBE contract goal through participation by a certified M/WBE but, in addition to partial compliance, submits statements of good faith efforts to meet the M/WBE contract goal acceptable to PBC; or
 - iv. A non-M/WBE Contractor who does not meet the M/WBE contract goal, but submits statements of good faith efforts to meet the M/WBE contract goal acceptable to PBC.

Chapter 6: Procurement by Competitive Sealed Bid (Invitation for Bids)

6.1 General Provisions - Invitation for Bids

An Invitation for Bids (IFB) results in a firm fixed-price contract awarded to the lowest responsive and responsible bidder.

A. Bids shall be solicited from an adequate number of Contractors to assure full and open competition. In the case of a single bid in response to an IFB, the Procurement Administrator may negotiate in order to determine if the price is fair and reasonable or may choose to re-advertise.

B. Solicitations may be canceled prior to bid opening or after bid opening. The file shall contain reasons supporting the cancellation or rejection of bids.

C. Each IFB shall include the following:

- i. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids and the address where bids are to be delivered;
- ii. General Conditions;
- iii. The purchase description, delivery, or performance schedule, and any Special Conditions and Detailed Specifications necessary. The Special Conditions and/or Detailed Specifications shall set forth clear and accurate specifications for the items to be purchased or scope of work for services needed;
- iv. Required Federal provisions if the contract is Federally funded;
- v. Required state provisions if the contract is funded with other than federal funds;
- vi. Bid protest procedures;
- vii. Special Conditions for M/WBE requirements and M/WBE forms B, C and D, as amended;
- viii. Proposal form; and
- ix. Such other forms as determined necessary by the Procurement Administrator.

D. The IFB shall require written acknowledgment by each bidder of the receipt of all amendments, addenda, and changes issued.

E. Bids shall be evaluated without discussions with bidders.

F. Good faith efforts to meet the M/WBE contract goal, if any, shall be evaluated as an element of responsiveness. PBC will not award a contract to a bidder who does not meet the requirements set forth in Chapter 5.

G. Award is made to the one or more responsive responsible bidders whose bids, conforming with all the material terms and conditions of the IFB, are the lowest in price on the basis of the price-related factor(s) specified in the IFB.

6.2 Opening of Bids

- A. Bids and modifications shall be opened publicly, at the time, date, and place designated in the IFB.
- B. The name of each bidder, the bid price, and other information that is deemed appropriate shall be read aloud or otherwise made available. This information shall be recorded at the time of bid opening.
- C. Examination of bids by interested persons shall be permitted only at the time of bid opening.

6.3 Cancellation/Rejection of Bids

- A. The Procurement Manager, in consultation with the using department, has the authority to cancel any procurement or reject any or all Bids.
- B. When it is determined that it is necessary to reject all bids, the Procurement Administrator shall notify each bidder that all bids have been rejected. The reasons for bid rejection must be in the contract file.

6.4 Rejection of Individual Bids

- A. Any bid that fails to conform to the material requirements of the IFB shall be rejected.
- B. Any bid that does not conform to the applicable specifications shall be rejected unless the IFB authorized the submission of alternate bids and the goods or services offered as alternates meet the requirements specified in the IFB.
- C. A bid shall be rejected if the bidder imposes conditions that would modify requirements of the IFB.
- D. A bid received from any bidder that is suspended, debarred, or otherwise ineligible to receive a Federal, State or PBC contract shall be rejected if the period of suspension, debarment, or ineligibility has not expired by the bid opening date.
- E. Low bids received from bidders determined by the Procurement Administrator to be not responsible shall be rejected. Similarly, low bids received from bidders determined by the Procurement Administrator to be non-responsive shall be rejected.
- F. Low bids received from bidders who did not demonstrate good faith efforts to meet the contract M/WBE goals will be rejected.
- G. When a bid guarantee is required ⁴² and a bidder fails to furnish the guarantee in accordance with the requirements of the IFB, the bid shall be rejected.

- H. A responsive bid received from a responsible bidder may be rejected based on finding that the price is unreasonable.
- I. The originals of all rejected bids and any written findings with respect to the rejections shall be maintained in the contract file.

- ## 6.5 Contract Awards
- A. Each contract shall be awarded to the responsible and responsive bidder(s) whose bid(s) meets the requirements set forth in the IFB, and is/are the lowest price on the basis of the price-related factor(s) specified in the IFB.
 - B. The successful bidder is notified of award by the Procurement Administrator.
 - C. The Procurement Administrator shall also notify unsuccessful bidders promptly that their bids were not accepted, and shall return any bid guarantee furnished with the unsuccessful bids to the unsuccessful bidders.
 - D. Following an award, a record showing the basis for determining the successful bidder, including the manner in which a tie was broken when there are equally low bids, shall be made a part of the contract file.

- ## 6.6 Bid Bonds
- When a bid guarantee is required by the IFB, submittal of the bid bond is an element of responsiveness. Therefore, if the bidder does not submit the required bid bond with its bid, the bid will be determined to be non-responsive and will be rejected by the PBC.

Chapter 7: Procurement by Competitively Bid Negotiation Methods (Request for Proposals / Request for Letters of Interest and Qualifications)

- ### 7.1 General Provisions – Request for Proposals
- A Request for Proposal (RFP) is an invitation from the PBC requesting firms to submit proposals to perform a specific project or provide specific services to PBC.
- A. RFPs shall be the solicitation type used to communicate PBC's requirements to prospective Contractors when PBC is doing a negotiated competitive procurement.
 - B. RFPs may be used when the procurement does not lend itself to sealed bidding, PBC expects that more than one source will be willing and able to submit a proposal and the award will be made based on factors in addition to price. This procurement method permits PBC to consider technical factors and negotiate scope, price and other contract terms.
 - C. RFPs must require that the evaluation be based on specific enumerated criteria or factors, including but not limited to price or cost. The criteria or factors must be included the solicitation document.

D. RFPs may permit discussions with proposers concerning the offers submitted, negotiation of contract scope, price or estimated cost, and other contract terms and conditions, and revision of proposals before the final Contractor selection.

E. If not self-evident, the rationale for choosing competitive proposals rather than sealed bidding procedures should be documented by the Procurement Administrator in the contract file.

7.2 Evaluation Committee

A All RFPs will be reviewed and ranked by an Evaluation Committee consisting of the following:

- ii. Three or more voting committee members, as deemed appropriate, from a pool of qualified staff appointed by the President upon the recommendation of the Procurement Manager. At least one voting committee member will be from the using department. The size of the committee will be determined based on dollar value or sensitivity of the procurement.
- iii. One non-voting committee member shall be M/WBE Contract Compliance to evaluate M/WBE compliance.
- iv. One or more non-voting members from the Purchasing Department to monitor compliance with the pre-established evaluation criteria and the Purchasing Regulations.
- v. A Project Manager from the using department.
- vi. Non-voting technical advisors as necessary.

B. All members of the Evaluation Committee, the Project Manager, the M/WBE representative, and others that may advise the Committee or participate in the review of proposals, must sign a Confidentiality Agreement prior to their involvement in the RFP review process.

7.3 Evaluation Factors

A. The evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement.

B. The evaluation factors for each procurement and the relative importance of those factors are determined by the using department and the Procurement Administrator.

C. RFPs shall clearly state the evaluation factors that will be considered in selecting the Contractor. Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in the RFP. RFPs shall include the cost or price and cost or price-related factors.

D. The Procurement Manager shall determine which proposals are in the competitive range for the purpose of conducting written or oral negotiations. The competitive range shall be determined on the basis of the factors that were stated in the solicitation.

7.4 Evaluation of RFPs

- A. The evaluations shall be based on the evaluation factors set forth in the RFP. Factors not specified in the RFP shall not be considered.
- B. Every responsive proposal submitted shall be evaluated by the Evaluation Committee, whose evaluations must be as thorough, objective and well-documented as possible. The Purchasing Administrator is responsible for ensuring that the evaluation results are sufficiently documented and are placed in the contract file, along with a copy of the proposal.
- C. Unlike sealed bids, which are publicly opened, the results of the proposal evaluation may not be disclosed, either before or after the contract is awarded, except as required in the event of a bid protest or lawsuit regarding the contract.
- D. The Evaluation Committee may, but need not, conduct written or oral discussions with responsible proposers who submit proposals within the competitive range.

Discussions are held between PBC and the proposers with the intent of allowing the proposer to revise its proposal to provide PBC the best value based on the requirements and evaluation factors set forth in the solicitation. These discussions may include bargaining, which includes persuasion, alteration of assumptions and positions, give-and-take and may apply to price, schedule, technical requirements, or other terms of a proposed contract. The Procurement Administrator determines the scope and extent of the discussions.

- E. Upon completion of discussions, the Procurement Administrator shall ask all proposers within the competitive range with whom negotiations have successfully concluded to submit their best and final offer. Oral requests for best and final offers shall be confirmed in writing. Best and final offers are requested only once in a competition, unless the Procurement Administrator determines that it is in PBC's best interest to request revised proposals, conduct another round of negotiations, and request a second best and final offer.
- F. After evaluation of the best and final offers, the Evaluation Committee shall rank the proposers and the Procurement Manager, shall select the responsible proposer whose best and final offer is most advantageous to the PBC.
- G. Prime Contractors and Subcontractors are required to submit and certify cost or pricing data under certain circumstances.
- H. Price negotiation is intended to permit the PBC and the proposer to agree on a fair and reasonable price.
- I. The selected firm will be required to show good faith efforts to comply with the contract M/WBE goal, if any. Compliance with the M/WBE goal is an element of responsibility and may be negotiated.
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- J. Promptly after the award of each contract, the Procurement Administrator shall notify

unsuccessful proposers in writing, unless pre-award notice was given.

7.5 General Provisions - Request for Letters of Interest and Qualifications

A. A Request for Letters of Interest and Qualifications (LIQ) is an invitation from the PBC requesting firms to submit proposals for Architectural or Engineering Services (A & E), as well as for certain construction management, project design or other permissible services that are directly in support of, connected to or related to the construction, alteration or repair of real property.

B. LIQs must require that the evaluation be based on specific enumerated criteria/factors exclusive of cost. The criteria/factors must be clearly stated in the solicitation document.

C. The Procurement Administrator will select the appropriate type of contract (fixed- price, cost reimbursement, time and materials) in accordance with the guidelines. The type of contract selected for use should be discussed and justified in the pre- negotiation plan.

D. Negotiations under the LIQ process are conducted with the most qualified proposer first, and only if PBC cannot reach agreement regarding a fair and reasonable price will negotiations be conducted with then second most qualified proposer. This process will continue until PBC is able to come to agreement with a proposer.

E. The selected proposer will be required to show good faith efforts to comply with the M/WBE goal, if any.

7.6 Evaluation of LIQ

A. All LIQs will be reviewed and ranked by an Evaluation Committee.

B. All members of the Evaluation Committee, the Project Manager, the M/WBE representative and others that may advise the Committee or participate in the review of proposals or must sign a Confidentiality Agreement prior to their involvement in the RFP review process.

C. The evaluations shall be based on the evaluation factors set forth in the LIQ. Factors not specified in the LIQ, shall not be considered.

D. Every responsive proposal submitted shall be evaluated by the Evaluation Committee, whose evaluations must be as thorough, objective and well- documented as possible. The Procurement Administrator is responsible for ensuring that the evaluation results are sufficiently documented and are placed in the contract file, along with a copy of the proposal.

E. Unlike sealed bids, which are publicly opened, the results of the proposal evaluation may not be disclosed, before the contract is awarded.⁴⁶

F. Promptly after the award of each contract, the Procurement Administrator shall notify

unsuccessful proposers in writing.

7.7 Cancellation/ Rejection of RFPs and LIQs

The Procurement Manager, in consultation with the using department, has the authority to cancel any procurement or reject any or all RFQs or LIQs.

7.8 Bid Bonds

When a bid guarantee is required at any time, the proposer must submit the bid guarantee as required by the PBC or its proposal will be rejected.

Chapter 8: Sole Source and Disadvantageous Procurements

8.1 General Provisions – Sole Source

Procurement of construction, goods, and services without competition is authorized under limited conditions and subject to written justification documenting the conditions which preclude competition.

- A. A competitive procurement is not required if:
 - i. The goods or services, including construction, needed by the PBC are available from only one responsible source and no other type of goods or services, including construction, will satisfy the needs of the PBC; or
 - ii. The PBC determines that an emergency for the requirement will not permit a delay resulting from competitive procedures as set forth in Chapter 4; or
 - iii. If after solicitation of a number of sources, competition is determined inadequate. This determination may be made by the Procurement Administrator based upon industry research, and the formal or informal solicitation of potential sources. The file must reflect a documented finding that adequate competition cannot be obtained in the time frame necessary to meet the needs of the PBC; or
 - iv. To exercise an option that was not awarded as part of the base contract award.

- B. The Procurement Administrator may determine that competition is adequate even if a single Bid or Proposal was received in response to a solicitation if after review:

- i. The Procurement Administrator determines that the specifications were not restrictive; and
- ii. That the other identified sources unilaterally chose not to submit a Bid or proposal.

If a single Bid is received under these circumstances, the Procurement Administrator may negotiate the price. The Procurement Administrator will be responsible for determining price reasonableness.

8.2 Sole Source Solicitation

All sole source procurements ("Sole Source") will require a Justification for Non-Competitive Procurement

Application (“Application”) and approval by the Non-Competitive Review Committee (“NCRC”) prior to award.

All proposed Application Packages will be posted on the PBC’s public/procurement website for a period of three (3) weeks. During this period, the public will be invited to comment and/or object and make a substantive claim that the procurement is not a Sole Source.

All public comments and/or objections will be provided to the NCRC. The NCRC will take into consideration the justification and supporting documents from the using department requesting the Non-Competitive Award, as well as the justification of the vendor and all public comments when reaching its decision. If the NCRC approves the Application, then the User Department will prepare a requisition, request for contract or board report if over \$25,000 for the vendor and include the approved application. If the NCRC rejects the Application, then the Application will be returned to the user department for a resubmission as a competitive procurement.

Chapter 9: Small Purchases

9.1 General Provisions – Small Purchases

- A. Small Purchases, often referred to as “under money” purchases, may only be used for the procurement of goods or services when the procurement does not exceed the Small Purchase threshold of \$25,000. PBC shall use the Small Purchase procedure that is most suitable, efficient, and economical based on the circumstances of each procurement.
- B. No one shall use the Small Purchase procedures when the procurement is estimated to exceed the Small Purchase threshold even though the resulting award does not exceed that limit. No one shall attempt to circumvent the process for procuring goods and services in excess of \$25,000 set forth in these Regulations by splitting a procurement totaling more than the Small Purchase threshold into several purchases.

9.2 Competitive Small Purchases

- A. For each purchase under \$25,000, the User Department shall solicit quotations from a reasonable number of sources including, when possible, at least one Minority and Women Owned Business Enterprise (“M/WBE”) to promote competition to the maximum extent practicable.
- B. The User Department shall consider the following factors when deciding how many quotations will be solicited:
 - i. The nature of the item or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or has limited sources;
 - ii. Information obtained in making recent purchases of the same or similar item;
 - iii. The urgency of the proposed purchase;
 - iv. The dollar value of the proposed purchase; and
 - v. Past experience concerning specific Vendor prices.

C. Generally, solicitation of at least three sources should be considered to promote competition to the maximum extent practicable. If practical, price quotes should be solicited from two sources not included in the previous solicitation.

D. If the Procurement Department determines that the best interests of the PBC indicate that quotations should be obtained from more than three sources, the User Department may require the solicitation of additional quotations.

E. A Small Purchase may be limited to one source if the User Department determines, in writing, that there is only one available source in accordance with these Regulations.

F. The User Department shall maximize competition for Small Purchases and shall not limit solicitations to suppliers of well-known and widely distributed makes or brands, or solicit on a personal preference basis.

Chapter 11: Debarment and Suspension

https://www.pbcchicago.com/wp-content/uploads/2017/08/DOC_538_file.pdf

12.1 Contract Disputes

ARTICLE 3. CLAIMS AND DISPUTES

SECTION 18.01 Claims

1. This provision of the Contract applies to claims for time and/or money based on: a differing site condition (Section 3.04), changes in the work under Article 17, including CPCOs that have been denied pursuant to Section 17.03, and all other claims made under the Contract.

2. Any claim made by the Contractor regarding the Project must be made in accordance with the requirements stated below.

- a. The Contractor expressly consents to both the time requirements and notice content requirements for making a Claim or Dispute under this Section 18.01.2. The Contractor acknowledges that the notice requirements set forth in this Section 18.01.2. will be strictly enforced and agrees that any failure on the part of the Contractor to provide notice strictly in accordance with the requirements of this Section 18.01.2. will constitute a waiver of the Contractor's right to make a Claim to the Commission Representative or submit a Dispute to the Executive Director. The Contractor further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section 18.01.2. will not be subject to or diminished by any claim on the part of the Contractor that the Commission Representative or Executive Director or any person acting on behalf of either of them had actual or constructive knowledge of any Claim or Dispute or any facts or circumstances supporting any such Claim or Dispute.
- b. The Contractor must provide notice, in writing, to the Commission Representative of any claim for differing site conditions within one (1) day of discovery as required by Section 3.04.
- c. The Contractor must provide notice, in writing, to the Commission Representative of any claim that may be made, within five (5) days after starting the work that is affected by the claim. The notice shall be referenced as a "Notice of Claim Related Work" and must state the nature of the claim, the work that is affected by the claim, and the anticipated duration of the Work.
- d. The Contractor must provide notice, in writing, to the Commission Representative of any claim based on: a differing site condition; a change in the Work directed by the Commission Representative; or any other cause within fifteen (15) days of completion of the changed Work.

- e. The Contractor will designate the document "Claim." The Claim must include:
 - (1) The amount of money and/or time extension sought by the Contractor, and the contractual and factual basis for each;
 - (2) A general statement of the basis for the claim;
 - (3) The facts underlying the claim;
 - (4) The Notice of Claim Related Work to the Commission Representative;
 - (5) Reference to the applicable Contract provisions and;
 - (6) All documentation that describes, relates to, and/or supports the claim.
- f. The Commission Representative will, within thirty (30) days of receipt of the Claim, respond by: requesting a meeting with the Contractor; making a written request for additional information from the Contractor; taking other action to attempt to resolve the Claim; and/or advising the Contractor, in writing, of the Commission Representative's position regarding the relief sought in the Claim. If the Commission Representative's written response is that the Claim is denied, the letter will also advise the Contractor of its right to file a Dispute to the Executive Director. Any steps taken by the Commission Representative to resolve the Claim will not exceed sixty (60) days from receipt of the Claim, unless the Contractor agrees to an additional amount of time in writing.
- g. If the Claim is denied by the Commission Representative, the Contractor must file its Dispute within thirty (30) days of receipt of the written denial of the Claim.

h.

SECTION 18.02 Disputes

- 1. Contractor's Request: In the event of any disagreement between the Contractor and the Commission Representative which the Contractor and the Commission Representative have attempted, but been unable to resolve, including, without limitation, changes, time extensions, claims, allowable costs or any other issues of fact or Contract interpretation based upon, relating to, or arising under the Contract, a request for resolution of the Dispute must be submitted to the Executive Director by the Contractor for final determination. The Contractor may not file a Dispute until there has been a denial of the Claim, which was the basis for the Dispute, by the Commission Representative. The default or termination of the Contractor are not matters that may be disputed under this provision of the Contract. The Contractor's failure to submit the Dispute within thirty (30) days of receipt of the Commission Representative's response to the Contractor's Claim is a waiver of the Dispute. The Executive Director may consider issues of Contract interpretation in connection with decisions to be made in resolving Disputes.
- 2. Request Requirements: Requests for resolution of Disputes must be made by the Contractor in writing, specifically referencing this section, and include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Contractor and Commission Representative; 3) the facts underlying the Dispute; 4) reference to the applicable provision of the Contract Documents by page and section; 5) the identity of any other parties believed to be necessary to the resolution of the Dispute; 6) all documentation which describes and relates to the Dispute and 7) if applicable, a statement explaining why the Contractor believes that prior to rendering a final decision, the Executive Director should meet with the Contractor, Commission Representative or any other parties believed to be necessary to the resolution of the Dispute. Copies of the request for resolution of the Dispute must promptly be provided to the Executive Director and Commission Representative on the same day. In addition, the Contractor's Dispute and any subsequent correspondence that relates to the Dispute, which the Contractor provides to the Executive Director, must be copied to the Commission Representative. The Commission Representative shall have thirty (30) days to respond in writing to the Contractor's submission by supplementing the Contractor's submission or to provide its own submission to the Executive Director and Contractor. However, the Commission Representative may request, and the Executive Director may allow an additional period of time to respond. Failure by the Commission Representative to respond shall not be deemed to be an admission of any allegations made in the request for dispute resolution, but may be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any, at this stage of the Dispute. The Executive Director's decision may thereafter be reached in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable by the Executive Director.
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- 3. Executive Director's Decision: The Executive Director's final decision shall be rendered in writing no more than thirty-five

(35) days after receipt of the response of the Commission Representative was filed or was due, unless the Executive Director notifies the Contractor and Commission Representative before the end of the thirty-five (35) day period that an additional period, not to exceed thirty (30) days, is needed for the Executive Director to respond. The Executive Director's decision shall be conclusive, final, and binding on all parties unless a judicial determination is sought in accordance with the provisions set forth below.

4. Implementation of Decision: In the event that the Executive Director's final decision requires a change to the Contract, the Executive Director's final decision shall be implemented through a Change Order which shall be made a part of the Contract, with or without the signature of the Contractor (if the Contractor refuses to sign the Change Order).
5. Contractor's Remedy: If either the Contractor or Commission does not agree with the decision of the Executive Director, the sole and exclusive remedy is judicial review by a common law writ of certiorari. Unless such review is sought within thirty-five (35) days of receipt of the Executive Director's decision, all right to seek judicial review is waived.
6. Contractor's Performance of Work: The Contractor may not withhold performance of and must prosecute any Work required by the Contract during the dispute resolution period, including judicial resolution. The Contractor must prosecute all of its Work, including any disputed Work, with the same diligence and effort as if no dispute existed. The Executive Director's written determination must be complied with pending final resolution, including judicial resolution of the Dispute. Neither the Executive Director's determination, nor the actions of the Contractor or the Commission Representative in connection therewith, nor the continued performance by either party, shall constitute an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.
7. Administrative Appeal of Dispute: The Contractor must follow the procedures set out in this Article 18, "Claims and Disputes", and receive the Executive Director's final decision as a condition precedent to filing a judicial review of the decision by common law writ of certiorari.

SECTION 18.03 No Waiver of Legal Rights

1. Neither the acceptance by the Commission or any representative of the Commission, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the Commission will operate as a waiver by the Commission of any portion of the Contract, or of any power herein reserved or any right of the Commission to damages herein provided. A waiver of any breach of the Contract is not held to be a waiver of any other or subsequent breach.
2. Whenever under this Contract, the Commission by a proper authority waives the Contractor's performance in any respect or waives a requirement or condition to either the Commission or the Contractor's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not deemed a waiver forever or for subsequent instances of performance, requirement, or condition. No such waiver is construed as a modification of this Contract regardless of the number of times the Commission may have waived the performance requirement or condition.

Appendices

<https://www.pbcchicago.com/doing-business/contractforms/#1504102336202-3a4935dc-82a9>

Sample Forms from Book 2 Standard Terms and Conditions