

FEDERAL RESERVE BANK OF NEW YORK
ACQUISITION POLICY

December 15, 2011

ACQUISITION POLICY

TABLE OF CONTENTS

Foreword: "The Community of Purchasing Professionals"

Part 1: Purpose and Scope

- 1.1 Purpose and Scope
- 1.2 Supplier Diversity

Part 2: Definitions

Part 3: Responsibility for Acquisitions

- 3.1 General Responsibility
- 3.2 Community of Purchasing Professionals
- 3.3 National Procurement Office
- 3.4 Credit Evaluation
- 3.5 Vendor Integrity Program
- 3.6 Ethical Considerations and Basic Obligation

Part 4: Methods of Acquisition

- 4.1 Competitive Proposals ("Solicitations")
- 4.2 Small Purchases
- 4.3 Exceptions to Competitive Acquisitions

Part 5: Issues in Source Selection and Contract Formation

- 5.1 Release of Acquisition Information
- 5.2 Vendor Lists
- 5.3 Standards for Drawing Specifications
- 5.4 Amendment of RFP
- 5.5 Cancellation of Solicitations
- 5.6 Late Proposal or Modification of Proposal
- 5.7 Immaterial Defect or Irregularity in Proposal
- 5.8 Clerical Error or Mistake
- 5.9 Responsibility of Offerors
- 5.10 Reporting of Anti-competitive Practices
- 5.11 Protests
- 5.12 Acquisition Records
- 5.13 Special Considerations for Subcontracting for General Construction Services

Part 6: Written Contracts

- 6.1 Conditions for Use
- 6.2 Term of Contract
- 6.3 Contract Execution
- 6.4 Contract Renewal
- 6.5 Contract Maintenance
- 6.6 Service Contract Labor Standards Law

Appendix No. 1 Overview of "Methods of Acquisition"

Appendix No. 2 e-sourcing Policies

Appendix A Important Provisions Normally Included in all Contracts
Appendix B Rider Provisions

Effect of this bulletin on previous bulletin:

This *Acquisition Policy* and its appendices supersede Operating Bulletin No. 10, its appendices and all prior amendments.

Revised December 15, 2011

FOREWORD TO ACQUISITION POLICY

The Community of Purchasing Professionals (“CPP”)

The Bank's *Acquisition Policy* ("Policy") provides a framework for combining two resources that are the key to acquiring quality goods and services at the most favorable terms through competition.

The first resource consists of the Bank's Contract Representatives. Business area product experts who make acquisitions and enter into contracts under the authority granted by Function Heads are "Contract Representatives." The *Acquisition Policy* uses this term throughout to characterize individuals given authority by Function Management, which retains responsibility for the process. The Contract Representative structure decentralizes the product/vendor selection process in order to focus the abilities of business area experts in the most efficient way possible. Business area experts can identify the specialized products or services needed to meet specific objectives. Together with Function Management, they create a Contract Representative system and provide the most flexible means possible to acquire a complicated range of goods and services in a timely fashion.

The second resource draws on the skills of the Bank's centralized Vendor Management & Procurement Department, as well as the knowledge and experience of the Legal, Accounting, and Credit and Payments Risk areas. These areas help to maximize procurement results while minimizing risk inherent in the process. Vendor Management & Procurement, Legal, Accounting, and Credit and Payments Risk provide Contract Representatives with support capabilities, standard procedures, and a control structure in which to operate. Together, these resources form a "Community of Purchasing Professionals." Each component has its function, each complements the other and together they allow the Bank to achieve its mission.

The Benefits of Distributed Authority

The Bank's *Acquisition Policy* has long recognized that the best method for acquiring a complicated range of products is to give responsibility for their acquisition to business area product experts. These experts have the specialized knowledge needed to identify requirements and make vendor selections. More importantly, the business areas have the clear incentive to make the selected products or services "work" successfully.

The distribution of acquisitions authority is linked to the Contract Representative's field of expertise and is not broadly based purchasing authority. Product variety, the rate of technological change and evolving management organization however, all work against the creation of fixed lists of goods and services that can be assigned to Contract Representative areas on this basis. Such lists are inflexible and quickly become obsolete. Furthermore, they tend to create bottlenecks and extend the approval process without necessarily improving accountability.

The Bank is organized according to distinct, functional lines-of-business. When overlapping product needs exist or acquisitions are made on behalf of different businesses, communication and collaboration are essential. Function Management understands its

responsibility to meet specific objectives. This Policy seeks to assist Function Management by describing processes and controls that will concentrate and limit the focus of their Contract Representatives to the successful completion of those objectives.

The Benefits of a Hybrid Acquisitions Environment

The Contract Representative system is intended to work inside a structured process. This process standardizes the routine steps of making acquisitions, provides purchasing/contracting expertise, and formalizes oversight controls. This centralized structure ensures that the requirements of the *Acquisition Policy* are both known and observed. Without it, the Bank may not receive the best value, service and quality. Accountability may suffer and the Bank might be exposed to risk in the form of vendor lawsuits, negative scrutiny and adverse publicity.

Contract Representatives are subject matter specialists and have superior knowledge of their specific requirements. They are charged with determining the best products to meet special needs and where to find them. Product experts may have an excellent general understanding of the *Acquisition Policy*. However, because their primary job is the support of their businesses, they may not know the procedural details needed to navigate all aspects of *Acquisition Policy*, vendor negotiations or contracting. Risk associated with the acquisitions process must also be evaluated under some circumstances. Accounting expertise is needed in the budgeting process associated with most major acquisitions. Finally, the records keeping and contract monitoring processes also benefit from a hybrid approach in order to prevent lapses in coverage and assist with vendor performance issues. This is where the Community of Purchasing Professionals bridges the gap.

PART 1: PURPOSE AND SCOPE

1.1 Purpose and Scope

A. Purpose

These policies are intended to foster the acquisition by the Bank of quality goods and services at the most favorable terms through competition.

B. Scope

The policies apply to all acquisitions of goods, services, or construction by the Bank.

C. Exceptions

They do not apply to acquisitions of real property or interests in real estate or to the discount of instruments under Section 13 of the Federal Reserve Act. In addition, open market purchases under Section 14 of the Federal Reserve Act or under the direction of the Federal Open Market Committee, purchases of currency, purchases in the capacity of fiscal agent for the United States Government, purchases by the Bank on behalf of foreign governments, central banks and international organizations, and other transactions with foreign governments, central banks and international organizations are outside the scope of these policies.

Commentary

(1) The policies describe a process for acquiring goods, services, and construction through the use of competitive solicitations (Sections 4.1, 4.2). The policies also contemplate the use of other procedures when special circumstances exist (Section 4.3).

(2) The policies apply to all Bank staff engaged in the acquisition process within the Bank. They are not intended to confer any rights on an offeror or other party outside the Bank and may be amended by the Bank at any time.

(3) The policies apply to an e-sourcing procurement process in addition to a paper procurement process. See Appendix No.2 for more information on e-sourcing procurement.

(4) The Legal Group should be consulted when determining the need for a contract, and, except as otherwise provided in the Bank's Policy on Legal Matters, Including Procedures for Contract Review, no contract should be executed on behalf of the Bank without prior approval of the Legal Group (Section 6.1).

(5) These policies are not intended to address post-award matters except as they may relate to the solicitation and award process (e.g., post-award release of award information (Section 5.1(c)), protest procedures (Section 5.11)).

(6) If goods or services are acquired by the Bank in connection with providing services

as fiscal agent for the United States Government or government sponsored entities, the Bank will under ordinary circumstances follow these policies unless the United States Government instructs it not to do so. If the United States Government instructs the Bank not to follow these policies, the Bank will determine an appropriate plan of action. Documentation concerning the instruction and the plan of action should be maintained by the Contract Representative involved in the acquisition.

(7) “Purchases made in the capacity of fiscal agent” refers only to those purchases made as agent of the United States Government. It does not include purchases of goods or services, such as equipment, made at the Bank’s discretion for use in providing fiscal agency services to the United States Government.

1.2 Supplier Diversity

- A. The Bank does not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, age, genetic information, or disability in the solicitation, award, or administration of contracts. All Bank officers, staff members, and non-employees, including vendors and visitors, are expected to abide by this non-discrimination policy.
- B. The Bank is committed to ensuring that all firms interested in doing business with the Bank have the maximum practicable opportunity to participate fairly in contracts awarded by the Bank. Therefore, supplier diversity is a consideration in the Bank’s *Acquisition Policy*. The Vendor Management & Procurement Department shall work with Bank Contract Representatives, current and prospective vendors, and external organizations to promote opportunities for diverse suppliers in the Bank’s acquisition activities. The Bank’s program to promote supplier diversity is facilitated by the requirements of Section 5.2 of this *Acquisition Policy*.
- C. In accordance with Section 342 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, the Bank requires that its service providers ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the service provider, and, as applicable, subcontractors. The Bank’s model language incorporating this requirement in contracts with service providers is set out in Appendix B to this *Acquisition Policy*. The Director of the Office of Minority and Women Inclusion (OMWI) may determine whether a service provider and, as applicable, a subcontractor, has failed to make a good faith effort to include minorities and women in their workforce. If the Director makes such a determination, the Director will recommend to the President of the Bank that the contract be terminated. The President may elect to terminate the contract or take other appropriate action. A Contract Representative should request a determination from the Legal Function if the Contract Representative does not know if a contract is for services. The Legal Function is to determine, on behalf of the Bank, whether a contract is a service contract, and the Contract Representative may rely on such a determination.

- D. The Bank has a policy of assisting the interests of socially and economically disadvantaged small businesses that may be used as subcontractors under general construction contracts with the Bank. The Bank's program of inclusion for general construction contracts is set out in Section 5.13 of this *Acquisition Policy*.

PART 2: DEFINITIONS

- A. "Acquisition" means purchasing, renting, leasing or otherwise acquiring any goods, services or construction by and for the use of the Bank or on behalf of other Banks. The term includes all aspects of the process including the description of requirements to satisfy Bank needs, solicitation methods, selection of sources, and award of contracts.

Commentary

(1) The intent of these policies is to set forth the procedures under which specified goods, services or construction are acquired. The Bank may define the items to be acquired by reference to how they are marketed. For example, if a software vendor offers software only in conjunction with required maintenance, then the Bank may treat the software and its maintenance as a single item and not issue a separate solicitation for maintenance. Similarly, with complex building management systems, where the system is marketed with ongoing proprietary maintenance as a condition of warranty, the system and its maintenance can also be considered a single acquisition.

(2) The policies do not apply to the Bank's use of software installed exclusively for evaluation purposes pursuant to a nondisclosure agreement or other trial license in which the vendor permits the Bank to use the software free of charge for a limited time to assess the suitability of the software for the Bank's purposes.

(3) An item leased to the Bank under a lease-purchase arrangement may be considered to have been acquired when the lease-purchase agreement is executed. Purchase of the item pursuant to the lease-purchase agreement would not be a separate acquisition, requiring a second acquisition process.

- B. "Approved Vendor List" means the list of vendors who have been screened and approved as vendors under the Vendor Integrity Program ("VIP"). (Section 3.5)
- C. "Award" means the selection of the responsible and responsive offeror whose response is determined to be most advantageous to the Bank based on the evaluation factors set forth in the solicitation. Award is distinct from and precedes the signing of a contract.
- D. "Best and Final Offer" means the final response made by an offeror participating in a formal acquisition process as requested by the Contract Representative.
- E. "Community of Purchasing Professionals" ("CPP") means the group consisting of business area product specialists and the Bank's full-time Vendor Management &

Procurement, Legal, Accounting and Credit and Payments Risk staffs.

- F. “Construction” means the process of building, altering, repairing, improving, or demolishing any Bank structure or building, or other improvements of any kind to any Bank real estate. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real estate.
- G. “Contract” means all types of agreements, regardless of what they may be called, for the acquisition of goods, services, or construction.
- H. “Contract Representatives” are business area product experts who make acquisitions or enter into contracts under authority delegated by Function Heads. The term includes authorized representatives of the Contract Representative acting within the scope of their authority as delegated by a Function Head.
- I. "Disadvantaged small business" has the meaning set out in Section 5.13(A) of this *Acquisition Policy*.
- J. “e-sourcing” means an acquisition process relying on a “hosted web application”. It should not be construed to mean the simple use of the Internet or e-mail to solicit offerors, obtain bids and make contract awards.
- K. “Goods” means all property except real estate.
- L. “Proposals Procedure” means a method of contracting that employs competitive solicitations and permits negotiations with offerors and revisions of responses as necessary prior to award.
- M. “Purchasing-Card” (“P-Card”) refers to an arrangement to effect payment to a vendor through a third party that serves as a financial intermediary and with whom the Bank has a pre-existing agreement governing the terms of the transaction.
- N. “Request for Information” (“RFI”) means a written request issued by the Bank for information concerning the price, quality, characteristics or technological advances of any goods, services or construction. The Bank may issue a RFI when it concludes it is necessary to have such information in order to assess its needs for a particular good or service.
- O. “Request for Proposal” (“RFP”) means a competitive written solicitation issued by the Bank in connection with competitive solicitations for proposals to supply described goods, services, or construction to the Bank upon specified terms and conditions, and includes all documents attached to or included by reference in the solicitation.
- P. “Responsible Offeror” means a vendor that, in the opinion of the Bank, possesses the skill, ability, financial and other resources, and integrity necessary for the faithful performance of the work, and who has complied with all requirements for eligibility set

forth in the solicitation (Section 5.9).

- Q. "Responsive Offeror" means a vendor that has submitted a response, which conforms in all material respects to the requirements of the solicitation.

Commentary

In determining responsiveness, judgmental evaluations of products utilizing the evaluation criteria set forth in the solicitation may properly be used to determine whether a product proffered by an offeror meets the requirements of the acquisition. The right to make such determinations and to reject as unresponsive any response which does not meet the purchase description is inherent in the definition of the term.

- R. "Services" means the furnishing of labor, time, or effort by a contractor.

Commentary

The term "services" includes services provided by consultants or other professionals.

- S. "Small Business" means a firm qualifying as a small business concern under the Small Business Act (15 U.S.C. § 632) and regulations thereunder.
- T. "Small Purchase Procedure" means an acquisition whose total value is between \$10,000 and \$100,000 made under the procedures of Section 4.2.
- U. "Vendor Integrity Program" ("VIP") means the program designed to augment existing Bank programs by screening the Bank's vendors for business and security purposes (Section 3.5).

PART 3: RESPONSIBILITY FOR ACQUISITIONS

3.1 General Responsibility

The Contract Representative, as designee of a Function Head, holds primary authority for an acquisition. The Contract Representative is the person or persons designated by the business area's Function Head to conduct the acquisition and contracting process. The Contract Representative is authorized to make decisions throughout the acquisition process. This authority includes:

1. Drafting the specifications for the product or service to be acquired;
2. Determining what criteria will be used to select among the different proposals;
3. Identifying in the solicitation the important elements in the contract that is sought by the Bank;
4. Determining whether the offerors meet the Bank's requirements for responsibility and requesting the credit evaluation described in Section 3.4, below;

5. Selecting the winning offeror;
6. Negotiating the business issues of the contract; and
7. Engaging the Bank's Legal Group as required for the preparation of a written agreement and notifying the Vendor Management & Procurement Department prior to the execution of a written agreement.

The term “Contract Representative” does not necessarily refer to a specific individual(s) within the business area, since contracting authority may differ depending on the nature of the acquisition, its value or the administrative procedure used. However, the individual(s) involved has responsibility for acquisitions only as the designee of the Function Head.

3.2 Community of Purchasing Professionals

The Contract Representative is expected to utilize the Bank’s full-time procurement specialists in the Vendor Management & Procurement, Information Technology Acquisitions, Legal, Accounting, and Credit and Payments Risk areas when performing duties in connection with Part 4. While these policies give general acquisitions authority to the Contract Representative acting under a Function Head, they also recognize that practical assistance on sourcing, negotiation, contracting and payment issues is best provided through the more centralized areas listed above. Working together, the Community of Purchasing Professionals is the most reliable way in which adherence to these policies, and those of the Bank's *Authority to Conduct Bank Business Policy* and *Policy on Legal Matters, Including Procedures for Contract Review* and the Bank’s *Code of Conduct* can be accomplished.

3.3 National Procurement Office

The Federal Reserve System’s National Procurement Office (“NPO”) conducts acquisitions, negotiates contracts, and coordinates consolidated purchasing activities on behalf of all Federal Reserve Banks wishing to participate. Participation in NPO contracts is binding on any Contract Representative area that has committed to make acquisitions under an NPO-negotiated contract. In this regard, the Bank's Contract Representatives will maximize use of NPO contracts where practicable.

3.4 Credit Evaluation

A Contract Representative who intends to enter into a contract with a vendor must request the Credit and Risk Management Department to perform a credit evaluation of the vendor if the contract meets one of the following criteria:

1. The product or service costs more than \$100,000 in any one year of the contract;

2. The product or service costs more than \$200,000 over the initial term of the contract or (if the business arrangement is expected to extend beyond the initial term) over the expected life of the contract;
3. The item being acquired is not manufactured as a standard product and the continued financial viability of the vendor is important to maintain the item;
4. The life of the contract exceeds six (6) years; and
5. The contract is renewed and the vendor in question has not been subject to credit evaluation during the last four (4) years.

The credit evaluation must be requested by using Form CRM 2-97, Request for Vendor Review, which is available from the Credit and Risk Management staff of the Credit and Payments Risk Group.

3.5 Vendor Integrity Program

All vendors of the Bank must be screened through the Vendor Integrity Program (“VIP”).

- A. The VIP screens the Bank’s vendors for business and security purposes. The VIP is administered by the Bank’s Federal Reserve Law Enforcement Unit and Legal Department. Business areas and Contract Representatives are required to comply with the VIP. The VIP screening should be completed before any work begins under the contract with the vendor.
- B. As part of the VIP, vendors submit company and employee information necessary to enable the Bank or it’s agent to conduct a background review. The VIP program requires the Bank’s vendors to become familiar with the Bank’s business practices, including the Code of Conduct, and agree to conduct business in a manner that would not knowingly or intentionally compromise the Bank employees’ compliance with the Bank’s Code of Conduct.
- C. To initiate the screening process for a vendor not then on the Bank’s Approved Vendor List, the business area should submit the vendor’s name, address, and other requested identifying information to the VIP site via the intranet. The vendor will then be sent a packet of forms and information. After the vendor completes and returns the forms with the required fee, a background investigation will be performed on the vendor and its principals. The Federal Reserve Law Enforcement Unit and Legal Department then evaluate those findings, and vendors that meet the Bank’s standards will be posted on the Approved Vendor List. VIP approval is valid for a limited duration as determined by the Federal Reserve Law Enforcement Unit and the Legal Department. The expiration date for the VIP approval is indicated for each vendor on the Approved Vendor List. All vendors must be re-certified upon expiration of their VIP approval. Either the business

area that requested the initial VIP approval or any other business area using the vendor may initiate the re-certification. The process is heavily dependent on the vendor's timely participation. To avoid delay, vendors should be submitted to the VIP site via the intranet in sufficient time to permit VIP screening prior to contract signing

- D. The VIP is mandatory for all existing and new vendors of the Bank that are not listed on the Approved Vendor List with a VIP certification that will continue through the performance of the contact. Participation in the VIP is required regardless of whether the vendor will work on-site at a Bank facility. The VIP applies to all subcontractors hired by a vendor to work on any Bank project, regardless of whether the subcontractor will work on-site. Those subcontractors have to complete the same VIP screening process as the vendor. The VIP does not apply to government entities, agencies, or instrumentalities or other Federal Reserve Bank.
- E. A business area may choose to absorb the cost of VIP investigation on behalf of a specific vendor under circumstances deemed appropriate by the business area.

Commentary

(1) Additional program information, procedures, answers to Frequently Asked Questions, the Approved Vendor List, and other VIP documents can be found at the VIP Intranet webpage. New vendors should be submitted to the VIP through this site.

(2) Business areas should inform potential vendors that they may be required to participate in and pay for the VIP if they are selected for a Bank contract. Business areas may choose to make the VIP documents available to potential vendors to review in advance, or even seek to qualify more than one potential vendor prior to selecting the winning vendor, if time is of the essence.

(3) For business areas selecting a vendor through the procurement process, the VIP does not replace the need for Credit and Risk Management review of vendors under Section 3.4, the Vendor List requirements of Section 5.2, or a responsibility determination under Section 5.9.

(4) The VIP does not replace, and is independent from, the FBI fingerprint screening, drug tests and background checks performed by the Federal Reserve Law Enforcement Unit on all vendor personnel who will work on-site and/or who will have network access.

3.6 Ethical Considerations and Basic Obligation

It is indispensable to the proper functioning of, and the maintenance of public confidence in, the Bank and the Federal Reserve System that every employee perform his or her duties with honesty, integrity and impartiality, and without improper preferential treatment of any person. Contract Representatives have a basic obligation in this regard insofar as they have influence over the selection of Bank vendors and the expenditure of Bank funds to acquire goods, services and construction. This obligation underscores the Contract Representative's responsibility to avoid conduct which gives rise to an actual or apparent conflict of interest, or which might result

in a question being raised regarding the independence of the Contract Representative's judgment or the Contract Representative's ability to perform the duties of his or her position satisfactorily.

A Contract Representative may not participate personally and substantially in an acquisition in which, to the Contract Representative's knowledge, he or she or certain related parties¹ have a financial interest that is directly impacted by the decision to select a particular vendor. Participation in a particular matter includes making a decision, recommendation, providing advice, or taking part in an investigation. In addition, no Bank employee may accept anything of value from a prospective offeror or vendor that is not permitted under Code of Conduct section 5.4 ("Gifts, Meals and Entertainment Rule").

To ensure compliance with these provisions, each Bank employee who expects to participate in any procurement of goods or services with an anticipated value of \$100,000 or more must, before doing so, certify to the Bank that (1) he or she does not have a conflict of interest with respect to any prospective offeror the Contract Representative intends to include on the RFP distribution list or from which the Contract Representative otherwise expects to receive a proposal; and (2) he or she understands the Gifts, Meals and Entertainment Rule.

To assist employees in identifying and avoiding conflicts of interest, all officers with signing authority of \$100,000 or more and all staff members whose regular responsibilities include participation in Bank procurements of \$100,000 or more are required to complete, on a yearly basis, a conflicts of interest briefing on relevant sections of the Code of Conduct and Section 208 of the Conflicts of Interest Statute. The briefing is delivered by the Ethics Office via a conflicts of interest e-Learning program. If a Contract Representative or any Bank staff engaged in the acquisition process of a procurement of \$100,000 or more has not completed the briefing within the preceding year, they must complete the briefing prior to participating in the procurement. The Bank's Ethics Office may also require Contract Representatives and other Bank staff to supplement this briefing by attending classroom-based training regarding procurement conflicts of interest issues.

PART 4: METHODS OF ACQUISITION

4.1 Competitive Proposals ("Solicitations")

(a) Conditions for Use. Competitive proposals should be used for any acquisition in excess of \$100,000 unless, as provided under Section 4.3, special circumstances exist calling for the use of another acquisition method.

Commentary

(1) Competitive proposals may be used for price competition alone or for price product and/or service competition. Functional or performance specifications may be used to facilitate consideration of alternative means of meeting Bank needs.

¹ Related parties include a Contract Representative's spouse, minor child, general partner, organization in which he/she is serving as officer, director, trustee, general partner or employee, or any person or organization with whom the Contract Representative is negotiating or has any arrangement concerning prospective employment.

(2) *If the Bank desires to seek information in order to assist in the preparation of a RFP or to determine in greater detail the nature, capabilities and/or availability of goods, services, or construction that the Bank has an interest in acquiring, it may first issue a RFI. An RFI should not be used as a substitute for a RFP. If a RFI contains information regarding a prospective acquisition care should be taken to ensure that its issuance does not compromise in any way the RFP process that it is intended to assist. For example, if any person receiving a RFI would thereby obtain an unfair competitive advantage over other offerors who will be involved in the RFP process appropriate restraints might be imposed on the eligibility of that person to participate in the prospective acquisition, or other steps might be taken to eliminate the unfair advantage.*

(3) *Competitive proposals are evaluated not only to determine if the items being offered meet the purchase description, but also to compare competing responsive proposals. For example, the quality and price of the goods, services, or construction offered by responsive offerors may be compared and evaluation criteria may be established to allow tradeoffs to be made between various criteria when determining which proposal is most advantageous to the Bank.*

(4) *The competitive proposal method allows a RFP to be drafted in such a way as to permit contact with offerors after proposals have been received and reviewed to allow clarification of and changes to proposals. See Sections 5.4, 5.6, 5.7 and 5.8. Adequate precautions must be taken to treat each offeror fairly and, except for solicitations involving competitive visibility or reverse auctions, described in Appendix No.2, to ensure that information gleaned from competing proposals is not disclosed to other offerors.*

(b) Request for Proposal. Proposals shall be solicited through a RFP that includes a description of the acquisition, any applicable specifications or service requirements, factors included in determining offeror responsibility, the evaluation criteria, and the relative importance or weight given to the criteria. The RFP may also include other contractual terms applicable to the acquisition and any background or supporting material necessary or helpful for preparation of a responsive proposal. For RFPs conducted through a reverse auction or competitive visibility, the RFP should clearly state that such procedures will be followed and that, by submitting a proposal, an offeror agrees to any disclosures of price or ranking that occur as part of those procedures.

Commentary

(1) *Some of the factors related to determining offeror responsibility are set forth in Section 5.9.*

(2) *While specific numerical weighting of the evaluation criteria is not required a fair competition necessitates an understanding on the part of all offerors of the basis upon which award will be made. This will promote responsive proposals and will assist the Bank in obtaining the optimum benefits from the competitive solicitation process.*

(c) Distribution of RFP, Submission of Proposals. A RFP may be distributed as a paper document, by electronic transmission, or through an e-sourcing tool. The RFP may permit electronic submission of proposals so long as appropriate procedures are established to ensure

confidentiality of the proposals and maintain the integrity of the competitive procurement process.

(d) Proposal Time. A reasonable time to prepare and submit proposals shall be given to prospective offerors.

(e) Pre-Proposal Conference. A pre-proposal conference may be used as a means of briefing all prospective offerors and explaining complicated specifications and requirements after the RFP has been issued and before the proposals are due.

Commentary

Ordinarily, a pre-proposal conference should be held soon after the issuance of a RFP. A pre-proposal conference should not be used as a substitute for amending a defective or ambiguous RFP.

(f) Opening of Proposals. Ordinarily, proposals shall not be opened or reviewed prior to the time set for the receipt of proposals. However, proposals submitted using an e-sourcing tool might be opened prior to the time set for the receipt of proposals to verify completeness when the Bank has reason to believe that there may be technical problems with the e-sourcing tool. Responses in paper form shall be opened in the presence of one or more witnesses at the time designated in the RFP.

Commentary

With acquisitions using competitive visibility or reverse auctions, the time set for receipt of proposals is when the window of opportunity for submitting proposals ends, and, for purposes of this section, disclosure of price or rank as part of those features does not constitute opening a proposal.

(g) Price and Cost Information. Prior to any award, the Bank may require the offeror to identify, in writing, price data bearing on the reasonableness of the proposal. The Bank may reserve the right in the RFP to have its authorized representatives inspect the facilities and examine any books, documents, papers, records, or other data of the offeror that pertain to and involve transactions relating to the contract, for the purpose of evaluating the accuracy, completeness, and timeliness of data supplied. Such requirements should be specified in the RFP.

(h) Negotiations and Other Contacts With Offerors.

1. An RFP may provide for negotiations with offerors following submission of proposals. Negotiations may include discussions that result in changes to the material terms or specifications of the RFP or proposal, or that provide material, additional information or guidance to an offeror that is to be taken into consideration in the preparation of a best and final offer. If negotiations are held, they need not include all offerors, but must include all offerors who are deemed responsible and whose proposals the Bank considers reasonably susceptible of being selected for award including any offeror whose proposal would be reasonably susceptible for award following changes in material terms or specifications or additional information or guidance following negotiations. The decision to begin negotiations of this type should be carefully documented by the Contract Representative and the acquisition file should record the nature of the negotiations taking place and with whom the negotiations are conducted. Care

must be taken to ensure that these negotiations are conducted in a manner that is fair and equitable and that does not compromise the integrity of the competitive proposal process. Negotiations must be followed by a request for submission of best and final offers from those with whom negotiations were held (see Section 4.1(i)).

2. In limited circumstances, the Bank may meet or have conversations with one or more offerors after proposals have been submitted which may not rise to the level of negotiations. Examples of contacts that do not rise to the level of negotiations are demonstrations of products or minor clarifications of the RFP or a proposal that could not affect the selection of the winning vendor. Care must be taken to ensure that these contacts are conducted in a manner that is fair and equitable and that does not compromise the integrity of the competitive proposal process. If, during the course of such contact, the Bank or the offeror begins to investigate possible material modifications to the original terms of the RFP or the proposal, the discussions should be considered negotiations and must be conducted as discussed above.

Commentary

(1) All contacts with offerors must be conducted in accordance with ethical business standards, and must further the Bank's goal of promoting fair and equitable acquisition practices. Any doubt as to whether contact with an offeror constitutes negotiations should be resolved in favor of requesting best and final offers.

(2) Limited contact with offerors after proposals have been submitted may be appropriate to ensure that the solicitation requirements were fully understood, and that any technical problems have been resolved and may allow an offeror to provide a presentation or product demonstration that clearly illustrates or supports the contents of its proposal. These limited contacts are separate from contacts that may occur which are incidental to Section 5.8. Such simple, limited types of interaction would ordinarily not need to be followed by a request for best and final offers. If however, during the course of such a contact, material modifications to proposal or RFP terms are raised or discussed, best and final offers must be requested.

(3) Generally, auction techniques, which involve revealing information about an offeror's standing relative to other offerors, are prohibited unless the Bank conducts a reverse auction (Appendix No.2, Section 2(B)) or utilizes competitive visibility (Appendix No.2, Section 2(A)) pursuant to this Policy. See also Section 4.1(h). Similarly, an offeror must not be given material information concerning the acquisition that is not provided to all other offerors with whom negotiations or other contacts are being held.

(i) **Best and Final Offers.** A request for best and final offers must be used following negotiations or when the material terms and specifications for an acquisition have been modified subsequent to the receipt of the original proposals. A best and final offer need not be requested from all offerors but must be requested from all offerors who participated in negotiations and, when the material terms and specifications of an acquisition have been modified, must be requested from all offerors the Bank considers reasonably susceptible of being selected for award. A date for submission of best and final offers should be specified. That date establishes the time after which no mistakes, except apparent clerical ones, may be corrected.

Commentary

Fair and equitable treatment must be accorded to offerors in determining whether best and final offers are to be requested.

(j) Award. Award shall be made by written notice to the responsible and responsive offeror whose proposal is determined to be the most advantageous to the Bank, taking into consideration the relative importance of the evaluation criteria as set forth in the RFP and the requirements of the VIP. No other criteria shall be used in the evaluation. The contract file shall indicate the basis on which the award is made. Unsuccessful offerors should be notified promptly.

Commentary

(1) *While a RFP may provide for an award based on cost alone, other important considerations, such as quality and timeliness of service, may also be among the evaluation criteria in the RFP. Thus, each proposal must be evaluated based on the facts of a particular situation, and award should be made to the offeror whose proposal is the most advantageous to the Bank, when evaluated in the context of the RFP provisions.*

(2) *When a proposal that would otherwise be susceptible of award is rejected based on non-responsibility the contract representative should document the basis for rejection.*

(3) *The file should show with particularity how the pertinent factors and criteria were applied in selecting the successful proposal. Documenting the basis for award is especially important in a case involving a large or complex acquisition or one in which the offeror proposing the lowest cost is not awarded the contract. If an e-sourcing acquisition process was used, in addition to any electronic records that may have been created, appropriate documentation should be maintained in hard copy or in a manner that will make it easily to be reproduced and used in hard copy.*

(k) Notification to unsuccessful Offerors. Promptly after award, the Contract Representative must notify unsuccessful offerors in writing. Depending on the nature of the acquisition, initial written notification to the losing offeror(s) may be limited to the basic facts surrounding the award, which in general terms provides the reason, the unsuccessful offeror's response was not accepted unless the price information readily reveals the reason. However, upon request, the losing offeror(s) should be given enough information to permit an appeal of the contract award. This information may include (1) the number of responses received; (2) the name of the successful offeror and (3) its bottom-line price. In no event may an offeror's cost breakdown, profit, trade secrets, manufacturing processes and techniques or other confidential information be disclosed to any other offeror.

Commentary

The best interests of the Bank and its offerors will be served if timely notification of the contract award is made to all interested parties. Without prompt notice, offerors may be forced to tie up valuable resources in anticipation of the contemplated service, which could create reluctance by the offeror to participate in future acquisition situations.

(1) Debriefing. In a large acquisition, the Bank may wish to debrief unsuccessful offerors. Debriefing information should include the Bank's overall evaluation process but point-by-point comparisons of offeror's responses should not be made. Debriefing should not reveal the relative merits or technical standing of competitors or the specific evaluation scoring.

4.2 Small Purchases

(a) Acquisitions \$10,000 and Under. Any acquisition not expected to exceed \$10,000 (\$20,000 for construction) may be made without obtaining competitive quotations or proposals if the contract representative determines the price to be reasonable.

Commentary

This section recognizes that there are some small purchases that do not require any type of competitive process as long as the reasonableness of the price is taken into consideration. A separate, higher threshold for requiring competition is established for construction acquisitions. See definition, Section 2(F).

(b) Acquisitions Over \$10,000. For any acquisition above \$10,000 (\$20,000 for construction) and that is not expected to exceed \$100,000 in total purchase price, unless special circumstances under Section 4.3 are applicable, source selection may be made without following the competitive procedures under Section 4.1, provided that the contract representative solicits a reasonable number of competitive quotations or proposals, normally at least three, in writing orally or through an e-sourcing tool.

Commentary

(1) This section recognizes that certain small purchases do not justify the administrative time and expense necessary for the use of formal competitive proposals. This streamlined approach makes small purchases administratively simpler while maintaining fair competition. The basic policies applicable to the competitive proposal process, including those regarding contacts with offerors as described in Section 4.1(h) and those set forth in Part 4 of this Policy, should be observed when conducting a small purchase.

(2) An acquisition shall not be artificially divided merely to permit the use of small purchase procedures, thus circumventing the procedures required by Section 4.1.

(3) Small purchases greater than \$10,000 (\$20,000 for construction) and not exceeding \$100,000 may be made using oral, written, or e-sourcing solicitations as circumstances dictate. Relevant circumstances may include the complexity of the specifications, the nature and extent of the terms under which the acquisition is to be made, and the Contract Representative's assessment of the risks that might be presented by use of the less formal oral solicitation. The Bank may request that quotations or proposals be submitted orally, in writing or through an e-sourcing process. If oral quotations or proposals are submitted, written confirmation of the selected quotation or proposal should ordinarily be obtained prior to the award of a contract.

(4) *Written solicitations or solicitations sent through an e-sourcing tool can be particularly effective in avoiding confusion and misunderstanding with respect to the acquisition and can serve to document the fairness of the process followed. Generally, these solicitations should be used when the acquisition involves complex specifications or specialized or extensive conditions, and should include, as appropriate, specifications, proposal requirements, proposal submission deadline, selection criteria, award date, and contract terms and conditions.*

(5) *Oral solicitations are generally used when the acquisition involves goods and services of standard quality or description (printer ribbons, diskettes, computer paper). If an oral solicitation is used, the substance of the communication between the Bank and an offeror should be documented. Documentation should ordinarily include the date and time of the communication, the name and telephone number of the company and person contacted, information provided to the offeror describing the solicitation and the details of time quotation or proposal received.*

4.3 Exceptions to Competitive Acquisitions

A. Procedures other than competitive solicitations or small purchase procedures may be used in the following circumstances. The Contract Representative should draft a memorandum with sufficient supporting documentation to justify the use of the exception to acquisition procedures, and obtain the approval of a senior officer (Vice President or higher). The approving senior officer must have the appropriate level of signing authority, pursuant to the Bank's *Authority to Conduct Bank Business Policy* for the expected dollar expenditure and, where required by the *Authority to Conduct Bank Business Policy*, approval of the Bank's Board of Directors. A copy of both the approval memorandum and senior officer approval should be placed in the acquisition file of the Contract Representative area and forwarded to the Vendor Management & Procurement Department as the central repository for contract information.

1. **Sole Source**. The property or services are available from only one responsible supplier and no other type of property or services will satisfy the Bank's needs.

Commentary

(1) *A sole-source acquisition involves no competition and should be utilized only when justified and necessary to serve Bank needs. A sole-source award should generally be made only where no other source of supply is available.*

(2) *In the case of a follow-on contract such as the continued development or production of a major system or highly specialized equipment, when it is likely that award to a vendor other than the original vendor would result in substantial duplication of cost which is not expected to be recovered through competition, or unacceptable delays in fulfilling the Bank's needs, such property may be deemed to be available only from the original source. Under certain circumstances, services provided by professionals and others may be deemed available only from that source. For example, if continuity in the provision of a service may be important enough to outweigh the advantages of competition, and if award to another service-provider would likely cause substantial duplication of costs or unacceptable delays. In other cases, specific personal expertise or experience on the part of a professional (e.g., an attorney or*

consultant) may support selection of the individual without competition. In such cases, however, the reasonableness of the cost of the services should be evaluated. Follow-on contracts are subject to all Credit Evaluation and VIP requirements set forth in Part 3 of this Policy.

(3) The sole-source exception should not be used as a basis for acquiring a particular brand name product when other comparable products are offered by different vendors. For example, the sole source exception is not an appropriate basis for acquiring a particular make of computer hardware or software when other satisfactory products are offered under a different brand name.

- 2. Exigency.** The Bank's need for the property or services is of such unusual and compelling urgency that it would be demonstrably and significantly injured unless it can limit the number of suppliers from which it solicits responses or take other steps to shorten the time needed to acquire the property or services.

Commentary

For example, procedures other than competitive solicitation procedures may be used where the urgency of the Bank's need does not permit the delay involved in utilizing more formal methods of acquisition.

- 3. Contract Renewal.** Bank policy permits the renewal of an existing contract without a competitive process when the best interests of the Bank would not be served by the issuance of a new solicitation. Legal, Vendor Management & Procurement, Management Information and Credit and Payments Risk should be advised in advance of plans to renew an existing contract. Generally, contracts should not be renewed more than once without solicitation of competitive proposals.

Commentary

Bank policy on contract renewals takes into consideration factors such as frequency of renewal, length of renewal term, reasonableness of renewal terms in light of market conditions, and whether the Bank's best interest would be served by a renewal. An area's renewal practices should not be so broad as to undercut the purpose of these policies.

- 4. National Procurement Office ("NPO") Contracts.** If the Bank decides to purchase goods, services, or construction under a contract executed by the NPO, then the Bank need not use this Policy for such an acquisition, provided the NPO itself has followed the Policy when entering into the contract. The NPO will advise the Federal Reserve Banks of those contracts, which are not entered into in accordance with the Policy.

Commentary

(1) The NPO coordinates and conducts procurement activities for the benefit of one or more Reserve Banks by combining the purchasing power of multiple Banks and using economies of scale to achieve cost savings.

(2) *As part of its procurement activities, the NPO may enter into a contract between the offeror and the NPO, with no obligation on the part of any Federal Reserve Bank to purchase a fixed or minimum amount of goods. Since such contracts are not established in accordance with this Policy, a Contract Representative wishing to purchase goods, services or construction under such a contract must comply with this Policy. The NPO contract may be considered one of the proposals received, and an acquisition maybe made under the NPO contract only when the NPO contract conforms to specifications and requirements set forth in the RFP and when evaluated against other proposal is determined to be the most advantageous to the Bank taking into consideration price and other factors set forth in the RFP. The Bank may at its discretion contact the NPO to obtain additional information concerning the NPO contract or the prospective offeror.*

(3) *An acquisition under a volume or blanket purchasing agreement should be handled in the same manner as an acquisition under an NPO contract (i.e., if the volume or blanket agreement was not competitively bid, subsequent purchases should be made in accordance with this Policy).*

5. Strategic Supplier. An initial acquisition is made in anticipation of establishing an ongoing relationship that will facilitate the subsequent design, development and/or acquisition of goods or services for the benefit of the Bank or that will meet the strategic business needs of the Bank or the Federal Reserve System. Subsequent acquisitions made pursuant to an established strategic supplier relationship may be made without using competitive solicitations. Establishment of a strategic supplier relationship requires prior approval of a Senior Vice President or above.

Commentary

(1) *The Contract Representative should document clearly the Bank's purposes that are to be served by creation of a strategic supplier relationship, and the anticipated nature, scope, and duration of the relationship. A strategic supplier relationship should be more than just an anticipated series of acquisitions. Most often, a strategic supplier relationship will involve ongoing consultation and developmental work on a significant Bank project.*

(2) *The materials used for the initial selection of the supplier for a strategic relationship should state clearly that an ongoing strategic relationship is anticipated and should elicit information sufficient to select a vendor appropriate for such a relationship.*

(3) *A strategic supplier relationship should be evaluated periodically to ensure that the Bank's needs are being met and that the follow-on acquisitions are being made under reasonable terms. Ordinarily, a strategic supplier relationship should not be maintained for more than five years, without being thoroughly re-examined to determine whether it is still in the best interests of the Bank or the Federal Reserve System to maintain the relationship.*

6. Pilot Programs. The President or First Vice President determines that procedures other than those in these policies should be implemented in conjunction with a test of an alternative approach to acquisitions (a "pilot program"). Any such pilot program should have a well-defined structure and scope, should be of limited duration with

specific start and completion dates, and should be conducted in consultation with the NPO.

Commentary

(1) This section is intended to provide the flexibility to investigate the suitability of acquisition processes that would not otherwise fit within the parameters of these policies. Because, by definition, a pilot program would involve a departure from established practices, incorporating appropriate limits and controls in the program will be essential.

(2) A pilot program is not to be confused with the exception processes listed elsewhere in Section 4.3. While those exceptions might be used to approve a specific departure from the competitive requirement on a particular acquisition e.g., not using competitive solicitations, a pilot program would ordinarily be pursued as part of a strategy to determine whether other procedures should be utilized on a permanent basis.

(3) As a practical matter, it is anticipated that the NPO and the Bank would most often conduct a pilot program. In the event that the Bank wishes to consider undertaking a pilot program, that Bank should first consult with the NPO. If the program moves forward, there should be communication and coordination between the Bank and the NPO throughout the pilot.

7. Other. The President, First Vice President, an Executive Vice President, or a Senior Vice President determines that it is necessary to use procedures other than those for competitive proposals or small purchases.

Commentary

(1) While in the situations specified an award may be made without any competition, the intent of these policies is to require as much competition as is practicable in a given situation.

(2) The sole-source, exigency, or other exceptions are also applicable, as specified in Section 4.3, to acquisitions the total price of which does not exceed \$100,000, and must follow the same documentation and approval process as set out in this Section 4.3A.

(3) Any acquisition proceeding without benefit of competitive procedures and whose value is \$500,000 or greater must be pre-approved by the Bank's Board of Directors. The Bank's Authority to Conduct Bank Business Policy contains this requirement and other limitations on the approval authority of Bank officers.

(4) When acquisition procedures under Section 4.3 are used, the documentation justifying use of such procedures should be reviewed and re-evaluated every five years.

(5) The Vendor Management & Procurement Department can assist Contract Representatives with procedures concerning exceptions to competitive acquisitions and the necessary supporting documentation.

PART 5: ISSUES IN SOURCE SELECTION

5.1 Release of Acquisition Information

A. Before Solicitation

1. Generally, specific information concerning proposed acquisitions shall not be released to any offeror before solicitation. Except as provided in Item 2 below, if information is to be released to any offeror, the information should be provided to all prospective offerors as nearly as possible at the same time so that one prospective offeror is not given an unfair advantage over another.
2. Information concerning a prospective acquisition may be provided to outside parties in order to obtain necessary services or assistance in preparing for the acquisition, such as technical evaluation, or preparation of specifications or in connection with a RFI. If the party to whom the information is provided is a prospective offeror and would obtain an unfair competitive advantage over other offerors, or if the prior involvement would impair that person's objectivity in performing the contract work, appropriate restraints should be imposed on the eligibility of that person to participate in the resulting acquisition.

B. Between Solicitation and Award

1. Until an award is made, information contained in the proposals and other information concerning the award, should be disclosed, on a need to know basis, only to Bank personnel or to the Bank's consultants, contractors or agents. Such information should be disclosed to the fewest number of people consistent with an orderly, efficient approach to handling the acquisition data while maintaining a fair and competitive acquisition process. For solicitations, involving reverse auctions or competitive visibility, price or overall rank may be disclosed prior to award.

C. After Award

1. Information contained in proposals, and other information concerning the award, may be disclosed in accordance with the Bank's *Freedom of Information Policy*. An offeror must identify any materials for which confidentiality is requested, and provide an appropriate justification for the request.
2. Unsuccessful offerors who request additional information regarding the contract award should be provided the name, address, bottom line amount of the successful proposal, and a general statement of the reason the requestor's proposal was rejected, unless the price information sufficiently indicates the reason. Other information may be provided in accordance with the Bank's *Freedom of Information Policy*. Care must be taken to ensure that confidential information is not disclosed.

Commentary

For further information regarding the handling of confidential material, refer to [Security Assurance for the Federal Reserve](#) and the Bank's Security Matters/Information Security Policy concerning "Security Matters."

5.2 Vendor Lists

(a) **Vendor Lists.** Lists of prospective offerors should be established to assure access to adequate sources of goods, services, or construction. Offerors that request to be included and that are considered capable of fulfilling the Bank's requirements are to be placed on the appropriate list. Any offeror who does not submit a proposal or otherwise respond to a RFP may be removed from the list.

(b) **Consideration of Diverse Suppliers.** The Contract Representative must make a reasonable effort to include at least one diverse supplier on the prospective vendor list for distribution of an RFP or solicitation of quotations or proposals for a small purchase. Diverse suppliers include, but are not limited to, minority- and women-owned businesses and small businesses. The Contract Representative should request assistance from the Vendor Management & Procurement Department to identify diverse suppliers, and the Contract Representative will be presumed to have made a reasonable effort if he or she works with the Vendor Management & Procurement Department to identify at least one diverse supplier to include on the prospective vendor list for the acquisition. The Vendor Management & Procurement Department will assist the Contract Representative in the effort to identify diverse suppliers for a particular acquisition.

(c) **RFP Distribution Lists.** RFPs should be distributed to as many prospective offerors as is compatible with efficiency and economy in securing competition. A prospective offeror that requests a RFP should generally be provided one unless it is unable to fulfill a basic requirement of the RFP or other reasonable grounds for excluding it exist. A prospective offeror who requests and receives a RFP after it has been distributed to other prospective offerors must abide by the schedule, deadline, and terms established in the RFP as distributed and as it may be amended.

(d) **Prequalification.** Prospective offerors may be pre-qualified for particular types of goods, services, or construction, or for a particular acquisition. Prequalification means that the Bank considers a prospective offeror to be responsible and capable of fulfilling the Bank's requirements. Prequalification is not a conclusive determination of responsibility, and a pre-qualified offeror may be rejected as not responsible based on subsequently discovered information. Similarly, a prior failure to pre-qualify will not prevent a subsequent determination that an offeror is responsible with respect to any given acquisition.

5.3 Standards for Drawing Specifications

Plans, drawings, specifications, standards, or purchase descriptions for acquisitions shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Bank's needs and shall not be unduly restrictive.

Commentary

(1) Contract Representatives should make every effort to avoid specifications that are based on unique features or restrictive service considerations that would serve to exclude some suppliers. Likewise, any feature or a specification that arbitrarily restricts competition should be avoided.

(2) "Brand-name or equal" purchase descriptions should generally be limited to a situation when an adequate specification or more detailed description cannot reasonably be made or when such descriptions are used as a standard industry practice. For example, if complete compatibility with existing Information Technology equipment or software is necessary, a determination by the Bank may be made that only a particular brand (or its equivalent) will satisfy the requirement and a solicitation in such terms may be issued to all vendors supplying that product.

(3) The required operating authority, all necessary licensing, and insurance coverage should also be taken into consideration during preparation of RFPs. Because operating authority requirements sometimes inhibit competition among potential vendors, they should not be a prerequisite for submitting responses. However, the solicitation should clearly state that prospective offeror must demonstrate the capacity to obtain the necessary operating authority and that the successful offeror will be allowed a reasonable period of time in which to obtain required operating authority before the contract may be awarded to the next best offeror.

5.4 Amendment of RFP

Any change to a RFP is to be made by written amendment to the RFP. Amendments made before the time for response opening shall be provided to everyone to whom solicitations have been furnished and should be issued to provide a reasonable time for all prospective offerors to respond. Amendments to solicitations made after the opening of all responses generally should be provided to all offerors. If, however, negotiations have already been held with offerors, then the amendment may be provided only to those offerors, as long as the amendment does not affect the susceptibility to award of other offerors' responses. Any information given to a prospective offeror concerning a solicitation is to be furnished promptly to all other prospective offerors as an amendment to the solicitation if the lack of such information would be prejudicial to uninformed offerors.

5.5 Cancellation of Solicitations

A solicitation may be cancelled, or all responses rejected, in whole or in part as specified

in the solicitation, for any reason. The reasons for cancellation or rejection shall be made part of the contract file.

Commentary

A solicitation may be canceled for any reason, including situations where there is no longer a requirement for the goods, services, or construction, or where amendments to the solicitation would be of such magnitude that a new solicitation is desirable or where the price of all offers received is considered too high or when technical difficulties prevent timely submission of proposals.

5.6 Late Proposal or Modification of Proposal

- A. Late Proposal or Modification. Proposals, or modifications of proposals received after the exact time set for opening are late. The only acceptable evidence to establish the time of receipt is the Bank's time/date notation on the proposal or other evidence of receipt maintained by the Bank. A late response or modification shall not be considered for award unless it is determined by the Bank that the late receipt was due solely to mishandling by the Bank after receipt at the Bank. The Bank may extend the time for submission of proposals or modifications if it determines that it is in its best interests to do so. In such case, all prospective offerors shall be notified of the extended deadline and any offeror who had already submitted a proposal or modification, or who had submitted an untimely proposal or modification shall be given the opportunity to resubmit the proposal.

Commentary

An e-sourcing tool minimizes the chances of the Bank mishandling proposals after receipt, but does add factors that can contribute to the late submission of proposals. When a proposal is not received in the prescribed timeframe, the Bank must use its discretion in determining whether this was the result of technical problems, or whether the offeror committed an error. In the event that the Bank, prior to the submission deadline, extends the deadline for submission of proposals, the rescheduled deadline will be the deadline used for purposes of determining whether a proposal is late.

- B. Notification to Late Offeror. When a proposal or modification is received late and cannot be considered, the Contract Representative should promptly notify the offeror accordingly. A late proposal or modification not considered for award must be held unopened, unless opened for identification, until after award and then may be retained with other unsuccessful responses or returned to the offeror.
- C. Records. The following shall, if available, be included in the Contract Representative's files with respect to each late proposal or modification:
1. a statement or record of the date and hour of mailing, filing, or delivery;
 2. A statement or record of the date and hour of receipt; and,
 3. An explanation of the circumstances if the late proposal was considered for award

due to Bank mishandling or because of the extension of the submission deadline.

5.7 Immaterial Defect or Irregularity in Proposal

An immaterial defect or irregularity in a proposal is one that is merely a matter of form, and one that can either be corrected by the offeror or waived by the Bank without being prejudicial to other offerors. A defect or irregularity is immaterial when the effect on price, quantity, quality, or delivery is negligible in relationship to the total cost or scope of the goods, services, or construction being acquired. Prior to award, the Bank may waive any immaterial defect or irregularity in a proposal or may give the offeror an opportunity to cure it.

5.8 Clerical Error or Mistake

(a) Clerical Error. The Contract Representative should examine each proposal for clerical errors that are apparent on the face of the proposal. Upon verification by the offeror, such apparent clerical errors may be corrected.

(b) Other Mistake. When the Contract Representative suspects that there may be a non-clerical mistake in a proposal, the Contract Representative may give the offeror an opportunity to confirm the terms of its proposal. In the event the offeror asserts that it made a material mistake and the Bank determines that there is sufficient proof that a material mistake has been made, the Bank may permit the offeror to withdraw its proposal. If the Bank chooses to enter into negotiations with offerors in accordance with Section 4.1(h), any mistake may be corrected in the best and final offer. After the receipt of best and final offers, no mistake, other than a clerical error, may be corrected.

Commentary

(1) Correction or withdrawal of any proposal before contract award requires careful consideration to maintain the integrity of the competitive acquisition process, to assure fairness and to avoid delays or poor contract performance. While an offeror should be expected to be bound by its proposal circumstances may arise where correction or withdrawal of responses is proper and should be permitted. An offeror's ability to withdraw its proposal may also be affected by applicable state law.

(2) To maintain the integrity of the competitive acquisition process, an offeror should not be permitted to correct a mistake in a best and final offer or in a proposal that is not to be followed by a best and final offer unless the mistake is clerical and is evident from examining the response document. An offeror should not be permitted to correct for errors in judgment. Examples of clerical errors include mistakes in addition or subtraction, transposition of numbers, or typographical errors or omissions that are readily apparent of their face in a proposal.

(3) Nothing in this section is intended to prohibit the Bank from accepting a voluntary reduction in price from the otherwise successful offeror after proposal opening or receipt of best

and final offers, provided that such reduction is not conditioned on, or does not result in, the modification or deletion of any conditions contained in the solicitation.

5.9 Responsibility of Offerors

- A. General. An acquisition shall be made only from and a contract awarded only to an offeror that the Bank has determined to be responsible.
- B. Determinations. The Bank's signing of a contract constitutes a determination that the prospective offeror is responsible with respect to the contract. When an offer is rejected because the prospective offeror is found to be non-responsible, the Contract Representative shall make, sign, and include in the contract file, a determination of non-responsibility, which shall state the basis for the determination. The unreasonable failure of an offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such offeror.

Commentary

(1) The Bank should determine that a prospective offeror is "responsible" before a contract is awarded to that offeror. The goal of this requirement is to minimize the possibility of a subsequent default by the offeror, late deliveries or other unsatisfactory performance that would result in additional costs to the Bank.

(2) Part 2, Definitions, contains a general definition of the term "responsible offeror." The following factors are among those that bear on the concept of responsibility:

- a. Adequate financial resources to perform the contract, or the ability to obtain them;*
- b. Ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;*
- c. Record of satisfactory performance with the Federal Reserve or other entities;*
- d. Satisfactory record of integrity and business ethics;*
- e. Necessary organization, experience, accounting and operational controls and technical skills, or the ability to obtain them;*
- j. Necessary production, construction, technical equipment and facilities, licenses and operating authority, or the ability to obtain them; and*
- g. Other qualifications necessary for eligibility to receive an award tender applicable laws and regulations.*

(3) *Current operating authority, licensing, and insurance coverage should not be a prerequisite for submitting proposals. However, the RFP may require offerors to demonstrate or provide assurance that they will be able to meet such requirements within the time specified by the Bank.*

(4) *Affiliates of the vendor are normally considered separate entities in determining whether the vendor that is to perform the contract meets the applicable standards for responsibility. However, the Contract Representative may consider the affiliates' past performance and integrity when they may adversely affect the prospective vendor's responsibility. Concerns are considered affiliated if directly or indirectly controlled, one controls or can control the other or a third party controls or can control both.*

(5) *A detailed inquiry into responsibility is not required in every case. The extent to which a review or investigation should be conducted will depend on the value and size of the acquisition and availability of information on file or offeror's past record of contract performance. It may be appropriate to discuss information obtained by the Bank with the offeror before a determination of responsibility is made. Normally, a prospective vendor should be informed if a preliminary determination of non-responsibility is made and given an opportunity to respond before an actual determination of responsibility is made. This information will be included in the acquisition records and handled in accordance with Section 5.12.*

(6) *Sources of information, which may be used by the Contract Representative to support determinations of responsibility, include:*

- a. Records and data on experience, including verifiable knowledge of personnel within the Bank.*
- b. Information from the prospective vendor, including bid or proposal information, questionnaire responses, financial data, information on production equipment, and personnel information.*
- c. Other sources such as other Reserve Banks, credit rating agencies, publications, suppliers, subcontractors, and customers of the prospective vendor, and business and trade associations.*

(7) *Responsible vendors are also required to comply with the VIP in Section 3.5.*

5.10 Reporting of Anti-competitive Practices

When, for any reason, collusion or other anti-competitive practices are suspected among any offerors, a notice of the relevant facts is to be transmitted to the Bank's General Counsel and General Auditor.

5.11 Protests

- A. An actual or prospective offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may submit a protest in writing to the Contract Representative. Protests must be submitted promptly.
- B. When a protest cannot be satisfied or settled by mutual agreement between the protesting party and the Contract Representative, the protesting party may submit the protest to the First Vice President or his/her designee for a decision. Decisions by the First Vice President or his/her designee are final.

Commentary

(1) A procedure for permitting protests by offerors and contractor to decisions relating to the solicitation or award of a contract is essential to establishing vendor confidence in the procedures for soliciting and awarding contracts.

(2) In the event of a protest, the Contract Representatives should review the facts pertinent to the claim, secure assistance from the Bank's legal counsel and other advisors, and coordinate with the Vendor Management & Procurement Department as appropriate. If the protest is referred to the First Vice President, the Contract Representative will provide data, documentation, information and support as may be required by the First Vice President or his/her designee.

(3) Decisions to delay award or signing of a contract because of protests should be made on a case-by-case basis.

5.12 Acquisition Records

Acquisition records shall be retained and disposed of by the Contract Representative in accordance with the Bank's record retention policies (see Section 6.4). If an e-sourcing process was used, electronic acquisition records shall be retained in hard copy form or in a manner that will allow them to be easily reproduced and used in hard copy.

Commentary

Because an e-sourcing process is conducted pursuant to a contract with an e-sourcing service provider, effective access to electronic records at a later date may become a problem if the e-sourcing services contract is no longer in place. For example, if access to a service provider's templates is no longer available, data that the Bank retained in electronic form may not be readily usable. Consequently, a hard copy of appropriate records should be retained or the records should be maintained in electronic form in a manner that will allow them to be easily reproduced and used in hard copy.

5.13 Special Considerations for Subcontracting for General Construction Services

- A. When contracting for general construction services, the Bank has a policy of assisting small businesses and disadvantaged small businesses. The term "small business" means a

business qualifying as a small business under Article 3 of the Small Business Act (15 U.S.C. § 632) and rules and regulations promulgated pursuant thereto, and the term “disadvantaged small business” means a small business:

1. More than fifty percent (50 %) owned by one or more socially and economically disadvantaged individuals; or in the case of any publicly-owned business, more than fifty percent (50%) of the stock of the business is owned by one or more socially and economically disadvantaged individuals; and,
 2. Whose management and daily business operations are controlled by one or more such individuals. Contractor may presume that socially and economically disadvantaged individuals include any minorities found to be disadvantaged by the Small Business Administration pursuant to Article 8 (*i.e.*, an individual who is a Black American, Native American, Hispanic American, or Asian American).
- B. Each solicitation for general construction services may specify as an evaluation criterion the existence and quality of the offeror’s subcontracting plan. including (a) plans for using disadvantaged small businesses, and (b) procedures for documenting compliance with the plan.
- C. In determining whether subcontracting possibilities exist, the Contract Representative may consider whether firms engaged in the business of general construction customarily contract for performance of part of the work or maintain in-house capability, as well as a potential contractor’s long-standing relationship with its suppliers. Determinations that no subcontracting possibilities exist must be documented.
- D. The Contract Representative and a Bank contractor for general construction services, acting in good faith, may rely on written representations by a company regarding its status as either a small business or a disadvantaged small business.
- E. Subcontracting plans are not required from small businesses.

Commentary

The Bank has a policy of assisting the interests of small businesses and one of the purposes of these policies is to establish a procedure for the acquisition of goods and services from such businesses. However, there are certain contracts, which are personal in nature and as such will not be governed by the acquisition rules concerning covered companies. Contracts that are personal in nature are contracts that so far involve the element of personal knowledge or skill or personal confidence that they can be performed only by the particular individual with whom made.

PART 6: WRITTEN CONTRACTS

6.1 Conditions for Use

For the purpose of this *Acquisition Policy*, written contracts are formal agreements, regardless of what they may be called, for the acquisition of goods, services or construction. Details concerning the item(s) or service(s) to be acquired along with the terms and conditions governing the acquisition are set forth in written form. This document is signed by authorized representatives of both the Bank and the vendor who agree to be bound by the terms and conditions therein.

Written contracts must be used in the following circumstances and may be used in other circumstances:

1. The product or service costs more than \$25,000 over the term of the contract;
2. The contract is for services to commence at a specified time;
3. The item being acquired is not manufactured as a standard product and the continued financial viability of the vendor is important to maintain the item;
4. The business arrangement with the vendor is expected to extend beyond the initial term of the contract and, over time, will involve the expenditure of more than \$25,000;
5. The vendor submits a sales contract to the Bank with a value over \$25,000; and
6. For service contracts for more than \$2,500, the Service Contract Act applies. Please see Section 6.5 for more information.

The Legal Group should be consulted when determining the need for a written contract and, except as otherwise provided in the Bank's *Policy on Legal Matters, Including Procedures for Contract Review*, no written contract should be executed on behalf of the Bank without prior approval of the Legal Group.

6.2 Term of Contract

The term or duration of a written contract will ordinarily be based upon factors that include among other things, market conditions, the complexity and size of the acquisition, and past experience. The term of a contract should be reasonable under the circumstances and consistent with the goal of preserving the advantages of a competitive acquisition process.

6.3 Contract Execution

Written contracts must be executed by an officer with the appropriate level of signing

authority for the dollar expenditure, pursuant to the Bank's *Authority to Conduct Bank Business Policy*. Contract Representatives should notify the Vendor Management & Procurement Department prior to the execution of a written agreement. The Vendor Management & Procurement Department is the Bank's central repository for contract information (as more fully described in Section 6.5 (B) below), and can also assist Contract Representatives with the contract process.

6.4 Contract Renewal

Bank policy permits the renewal of an existing contract without a competitive process under appropriate circumstances as described in Section 4.3.

6.5 Contract Maintenance

A. It is the responsibility of the Contract Representative as designee of the Function Head to assemble and maintain all relevant documentation concerning the acquisition and to ensure compliance with this *Acquisition Policy* and other relevant Bank policy.

B. The Vendor Management & Procurement Department maintains a central repository of data and supporting documentation concerning written contracts (i.e., Perfect Commerce Contract Manager). The Contract Representative is responsible for providing the Vendor Management & Procurement Department with appropriate information on existing or new contracts and for informing the Vendor Management & Procurement Department and Legal Group whenever changes or amendments are made to the terms of the contract. If requested, the Legal Group will advise the Contract Representative area when a Certificate of Insurance should be obtained.

6.6 Service Contract Labor Standard Law

The Service Contract Labor Standard Law, 41 U.S.C. Section 6701 et seq., (formerly codified as the Service Contract Act) (the "Act") applies to a contract entered into by a Reserve Bank, the principal purpose of which is to furnish services in the United States through the use of non-construction service employees. Any contract within the coverage of the Act must contain certain provisions with respect to wages and fringe benefits. The Contract Representative should determine the applicability of the Service Contract Act. If the Contract Representative has a question about the Service Contract Act or its application, or if the contract is in excess of \$2,500, the contract should be referred to the Legal Group.