

FEDERAL RESERVE BANK OF NEW YORK
ACQUISITION POLICY

August 5, 2013

ACQUISITION POLICY

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Effect of this policy on previous policy:

This *Acquisition Policy* supersedes the Acquisition Policy dated December 15, 2011, and all prior versions of the Acquisition Policy and Operating Bulletin No. 10.

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PART 1: GENERAL

1.1 Purpose and Scope

- (a) Purpose. The Federal Reserve Bank of New York Acquisition Policy (the “Policy”) is based on the Model Acquisition Guidelines for Federal Reserve Banks (including revisions pending as of May 17, 2013). The Policy is intended to foster the acquisition of quality goods and services, including construction, best suited to the needs of the Bank at the most favorable terms available through competition.
- (b) Relationship to MAG. The Model Acquisition Guidelines provide a framework of minimum procedures to be followed by the Bank in its acquisition process. As contemplated by the Model Acquisition Guidelines, the Bank has supplemented the guidelines with additional requirements that are consistent with the guidelines and do not undermine the principles of competition on which the guidelines are based. The Policy is intended solely for the Bank’s benefit.
- (c) Scope. Except as provided below, the Policy applies to all acquisitions of goods, services, and construction by the Bank. The Policy applies to the acquisition process from its inception through the award of a contract.
- (d) Exclusions. The Policy does not apply to:
- (i) acquisitions of real property or any interest in real property;
 - (ii) any discount, purchase, sale, transaction, or other operation conducted to extend credit, make advances, or provide liquidity to eligible parties or to implement the monetary policy or the directions of the Federal Open Market Committee or the Board of Governors of the Federal Reserve System under the authority provided in, without limitation, Sections 10B, 12A, 13, or 14 of the Federal Reserve Act (collectively, “Policy Operations”);
 - (iii) purchases, sales, or other transactions made by the Bank either with or on behalf of foreign governments, central banks, or international organizations (“CBIAS Transactions”);
 - (iv) selection of counterparties for Policy Operations or CBIAS Transactions; or
 - (v) selection of individuals as guest speakers, visiting or resident scholars, interns, or non-employee temporary workers. Selection of individuals as guest speakers or to fill temporary positions in the Bank is subject to procedures administered outside the scope of the Policy.

Commentary

- (1) The Policy describes a process for acquiring goods, services, and construction through the use of competitive proposals (Section 4.1) The Policy also contemplates the use of other procedures when a small purchase is involved (Section 4.2) and allows for exceptions when special circumstances exist (Section 4.3).
- (2) The Policy applies to all Bank staff engaged in the acquisition process within the Bank. The Policy is not intended to confer any rights on an offeror or other person outside the Bank. The Policy may be amended by the Bank at any time.
- (3) The Policy applies to an e-sourcing procurement process in addition to a paper procurement process. An e-sourcing tool can enhance the procurement process. However, use of e-sourcing must not contravene the

general acquisition principles established in the Policy. As with the paper procurement process, the Bank must determine, consistent with the Policy, the detailed procedures to be followed when utilizing e-sourcing.

(4) The Bank may procure goods and services needed by the Bank to perform fiscal agent services on behalf of the U.S. Government. 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 follow the Policy unless the United States Government instructs it not to do so. If the United States Government instructs the Bank not to follow the Policy and the Bank is considering complying with such an instruction, the Bank will consult with Board of Governors staff to determine an appropriate plan of action. Documentation concerning the instruction and the plan of action must be maintained in the acquisition file.

(5) The Policy is 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)) and protest procedures (Section 5.11). Vendor performance and vendor management are post-award matters generally outside the scope of the Policy, but the Policy includes some references to post-award matters that should be addressed in procurement contracts to facilitate post-award review.

(6) Individual non-employee temporary workers used for staff augmentation should be selected competitively following procedures to be administered by the Human Resources Office under the Bank's *Contingent Workforce Policy*. In contrast, the selection of staffing firms from which the Bank solicits contingent worker candidates is subject to the Policy. The Policy also applies to the selection of any consulting firm and any independent contractor other than an individual engaged for staff augmentation. A business area or the Human Resources Office should request a determination from the Legal Function – Financial Services, Technology, and Contracts division ("Legal-FSTC") or Legal Function – Corporate Affairs division if the business area or the Human Resources Office does not know if the Policy applies in a particular situation. The business area and Human Resources Office may rely on the Legal Function determination.

(7) Transactions outside the scope of the Policy remain subject to the requirements of other applicable Bank policies, including the contract requirements of the *Policy on Legal Matters, Including Procedures for Contract Review*.

1.2 Supplier Diversity

(a) **Nondiscrimination.** 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 to the Bank, are expected to abide by this non-discrimination policy.

(b) **Opportunity to Participate.** 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 Policy. The Vendor Management & Procurement Function shall work with 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 the Policy.

(c) **Workforce Inclusion.** 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, its subcontractors. Contracts with service providers must include a provision reflecting this requirement in a form approved by the Director of the Office of Minority and Women Inclusion (OMWI). The OMWI Director 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 its workforce. If the OMWI Director makes such a determination, the OMWI Director will recommend to the President of the Bank that the contract with the service

provider or subcontractor be terminated. The President may elect to terminate the contract or take other appropriate action. A Contract Representative or VM&P should request a determination from the Legal-FSTC if the Contract Representative or VM&P does not know if a contract is for services. Legal-FSTC is to determine, on behalf of the Bank, whether a contract is a service contract, and the Contract Representative and VM&P may rely on such a determination.

(d) Small and Disadvantaged Small Businesses. The Bank also has a policy of assisting the interests of small businesses and disadvantaged small business subcontractors under general construction contracts. Section 5.13 of the Policy sets out the Bank's Small Business Program, which is designed to promote the acquisition of goods, services, and construction from small businesses and disadvantaged small businesses. The Small Business Program is intended solely for the Bank's benefit and does not confer any rights on parties outside of the Bank.

PART 2: DEFINITIONS

(a) "Acquisition" means purchasing, renting, leasing, licensing, or otherwise acquiring any goods, services, or construction by and for the use of the Bank or on behalf of other Reserve 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 the Policy 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 generally available for purchase in the market. For example, if software is generally offered with associated maintenance, then the Bank may treat the software and its maintenance as a single item and not issue a separate solicitation for maintenance. Similarly, for complex building systems generally marketed with ongoing proprietary maintenance as a condition of warranty, the system and its maintenance can also be considered a single acquisition.

(2) An item leased to the Bank under a lease-purchase arrangement will be considered to have been acquired when the lease-purchase agreement is executed. Purchase of the item as contemplated by the lease-purchase agreement is not a separate acquisition requiring a second acquisition process.

(b) "Acquisition file" means the compilation of records documenting the acquisition process, which may include, without limitation, business requirements, solicitations, responses, evaluations, approvals, correspondence, and copies of contract documents. The acquisition file does not include original contract documents.

(c) "Award" means the selection of the responsible and responsive offeror whose response to a solicitation is determined to be best suited to the Bank's needs and most advantageous to the Bank based on the evaluation factors set forth in the solicitation. Award is distinct from and precedes signing a contract with the selected offeror.

(d) "Best and Final Offer" means the final proposal made by an offeror participating in a formal acquisition process when the Bank requests best and final offers (Section 4.1(i)).

(e) "Blanket purchasing agreement" means a contract that establishes general terms and conditions for acquisitions by the Bank that are made as needed during the term of the agreement by issuing orders under the agreement for the performance of services or delivery of goods. Blanket purchasing agreements usually do not specify a firm quantity of services or

goods. (Blanket purchasing agreements may be referred to as master ordering agreements, master service agreements, or by other agreement titles.)

(f) “Competitive proposals” means a method of vendor selection that employs solicitation of a proposal from more than one offeror and uses the procedures set forth in Section 4.1 of the Policy.

Commentary

(1) The Policy draws no distinction among “proposals,” “bids,” and “offers,” or among “offerors,” “proposers,” and “bidders.”

(g) “Competitive visibility” means a feature of an e-sourcing tool in which each offeror's relative rank, based on stated criteria, is made visible to all offerors, and proposals may be revised during a specified window of opportunity.

Commentary

(1) Ordinarily, competitive visibility should be used only when there are readily quantifiable criteria that are susceptible to ranking. Accordingly, if competitive visibility is to be used, prior to commencing the acquisition, the Contract Representative (assisted by VM&P) should determine the quantifiable criteria that will be used, e.g., cost, delivery time, availability of product features, and should identify those criteria in the RFP. (See Section 4.1(b).)

(2) In some acquisitions using competitive visibility, the criteria used to rank proposals may not be the only criteria taken into consideration when making an award, and the ranking displayed may not be a reliable indicator of the successful offeror. In such cases, to avoid misunderstanding, the RFP must clearly indicate that the ranking criteria will be supplemented by other criteria when an award decision is being made and must indicate that ranking alone cannot be relied upon to identify the successful offeror.

(h) “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 property. Construction includes services integral to the process of building, altering, repairing, improving, or demolishing, including architectural and design, engineering, construction management, and inspection services. Construction may include routine repair or routine maintenance of an existing structure, building, or real property.

(i) “Contract” means all types of agreements, regardless of what they may be called or the format in which they are presented, for the acquisition of goods, services, or construction.

(j) “Contract Representative” means a person with authority to enter into a contract on behalf of the Bank with respect to a particular acquisition. Authority to enter into contracts on behalf of the Bank is subject to the Bank's *Authority to Conduct Bank Business Policy*. The term “Contract Representative” does not refer to specific individuals within the Bank; contracting authority differs depending on the nature of the acquisition, its value, and the business area(s) for which the acquisition is to be made. The term includes the Contract Representative's delegate when the delegate is acting within the scope of his or her authority. (Section 3.2.)

(k) “Disadvantaged small business” is a small business:

(i) 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

- (ii) Whose management and daily business operations are controlled by one or more such individuals. Absent evidence to the contrary, the following individuals are presumed to be "socially disadvantaged:" Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, and other groups from time-to-time so designated by the U.S. Small Business Administration. See 13 C.F.R. §124.103-104.
- (l) "e-sourcing" means an acquisition process utilizing the Internet to conduct a competitive solicitation, generally relying on a hosted web application. e-sourcing should not be interpreted to mean the simple exchange of messages through the Internet (by e-mail or otherwise) to solicit offerors, obtain bids, and make contract awards.
- (m) "Goods" means all property except real property. "Goods" includes property generally offered subject to a license, including, but not limited to, software and data.
- (n) "Person" includes individuals and legal entities (e.g., partnerships, corporations, limited liability companies).
- (o) "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.
- (p) "Request for Information," or "RFI," means a written request issued by the Bank for information to assist it in the preparation of a proposed solicitation or, more generally, to obtain additional details regarding the nature, capabilities, and availability of goods, services, or construction that the Bank may have an interest in acquiring.
- (q) "Request for Proposal," or "RFP," means a written solicitation issued by the Bank for proposals to supply 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.
- (r) "Request for Quotation," or "RFQ," means a solicitation, generally written, issued by the Bank under the small purchase procedure for quotations or proposals to supply goods, services, or construction to the Bank.
- (s) "Responsible" means the person, in the opinion of the Bank, possesses the skill, ability, financial, and other resources, and integrity necessary for the faithful performance of an agreement for the goods, services, or construction to be acquired and has complied with all requirements for eligibility set forth in the solicitation (Section 5.9).
- (t) "Responsive" means the person has submitted a response to a solicitation that conforms in all material respects to the requirements of the solicitation.
- (u) "Reverse Auction" means a type of competitive acquisition, conducted using an e-sourcing tool, in which offerors submit their proposals in an interactive, real-time environment. Proposals are submitted during a specified window of opportunity, and the best price currently offered, but not the offeror's identity, is visible to the other offerors. Offerors may continue to submit proposals while the event window is open, thereby enabling the Bank to obtain the lowest cost for the goods or services requested.

Commentary

- (1) A reverse auction is best utilized when the goods or services requested are clearly specified, commercial, off-the-shelf products, and cost alone is the single criterion for award. A reverse auction can be used as a stand-

alone competitive acquisition procedure or for the best and final offer phase of a solicitation process. The solicitation must provide prior notice to offerors when a reverse auction will be used. See Section 4.1(b). Ordinarily, the offeror who wins the reverse auction will be awarded the contract for the requested goods or services. If the award will be based on criteria in addition to cost, that fact must be disclosed in the solicitation.

- (v) “Services” means the furnishing of labor, time, or effort by any person other than a Bank employee.
- (w) “Small Business” means an entity qualifying as a small business concern under the Small Business Act (15 U.S.C. § 632) and regulations thereunder.
- (x) “Small Purchase Procedure” means the solicitation process described in Section 4.2 for acquisition of goods, services, or construction with a value more than \$10,000 (or \$20,000 for construction) but not more than \$100,000.
- (y) “Solicitation” means any request made by the Bank to any person for terms on which the person would supply goods, services, or construction to the Bank. “Solicitation” includes a Request for Proposal issued under Section 4.1 and a Request for Quotation or other request made under the small purchase procedure provided in Section 4.2, as well as any request made under any of the special circumstances described in Section 4.3.
- (z) “Vendor Integrity Program,” or “VIP,” means the Bank’s program to screen offerors and Bank vendors for business and security purposes (Section 3.8).
- (aa) “Vendor Management & Procurement,” or “VM&P,” means the Bank’s Vendor Management & Procurement Function.
- (bb) “Written” or “in writing,” unless the context requires otherwise, includes communications recorded or sent by electronic means (e.g., facsimile transmission, e-mail, or other Internet utility) so long as the communication can be printed for retention.

PART 3: RESPONSIBILITY FOR ACQUISITIONS

3.1 General

Each business area is responsible for its purchase decisions. Business areas are supported through the acquisition process by VM&P, Legal-FSTC, and other Bank Functions that are responsible for certain procedural requirements to complete an acquisition consistent with the Policy. When a business area notifies VM&P of a prospective acquisition as provided in Section 3.2, the business area is entitled to rely on VM&P and other Bank Functions engaged by VM&P to perform the responsibilities identified to them in the Policy.

3.2 Business Area

(a) Contract Representative. The individual in the business area who has authority for a prospective acquisition is the Contract Representative for that acquisition. The Contract Representative may delegate to others responsibility to oversee the acquisition and to coordinate and perform the business area responsibilities related to the acquisition. The Contract Representative is responsible throughout the acquisition process to make decisions on behalf of the business area.

(b) Notice to VM&P. The business area must notify VM&P about a planned acquisition with an anticipated value of more than \$10,000 (more than \$20,000 for construction) so that VM&P can participate in the acquisition process as further described in Section 3.3. The business area may, but is not required to, notify VM&P about planned acquisitions with an anticipated value of \$10,000 or less (\$20,000 or less for construction). The individual who notifies VM&P about an acquisition will be the business area's primary point of contact for VM&P unless the notice specifically identifies another individual to serve in that role. The business area's primary point of contact will coordinate with the Contract Representative and others in the business area to perform the business area's responsibilities for the acquisition (as described in subsection (c)).

(c) Responsibilities. When the business area is assisted by VM&P with a planned acquisition, the business area is responsible for:

- (i) Deciding to acquire goods, services, or construction and to initiate the acquisition process;
- (ii) Defining business and technical requirements for the goods, services, or construction to be acquired and determining the amount available to be spent for the goods, services, or construction;
- (iii) Working with VM&P to determine the approach to complete the acquisition consistent with the Policy;
- (iv) Approving RFI documentation (if an RFI is undertaken) and solicitation documents or, if a special circumstance warrants an exception to competitive procedures, preparing documentation and obtaining approval for the exception from an appropriate senior officer of the Bank;
- (v) Securing any approvals where business plans and strategies are integral to the approval (e.g., Investment Review Committee, Operational Risk Committee, and budget approvals, if required);
- (vi) Participating in the evaluation of solicitation responses, including offeror presentations, and reviewing the results of offeror reviews (e.g., VIP, credit review, conflict of interest review, information security assessment) to determine whether or not offerors are responsible;
- (vii) Selecting the vendor;
- (viii) Working with VM&P to finalize business terms and with Legal-FSTC to approve a procurement contract with the selected vendor;
- (ix) Signing contract documents with the selected vendor (or obtaining the signature of a business area officer consistent with the *Authority to Conduct Bank Business Policy*).

Commentary

(1) Depending on the nature, value, and complexity of the acquisition, the Contract Representative may be the business area's primary point of contact for the acquisition or the Contract Representative may involve one or more individuals from the business area in the acquisition and designate one as the business area's primary point of contact. The Contract Representative may also delegate responsibility for an acquisition to another Bank business area that acts as an internal service provider, e.g., the Technology Services Group for information technology projects or the Real Estate Department for building projects. If the Contract Representative delegates responsibility to another business area, the Contract Representative will determine with the other business area

how communication will be managed between them to ensure that the Contract Representative is consulted and given whatever information the Contract Representative needs to make decisions for the business area.

(2) If an acquisition is to be made for the benefit of multiple business areas, the affected business areas will coordinate among themselves to determine how decision making and other business area responsibilities will be managed. The affected business areas will, collectively, designate a Contract Representative for the acquisition and a primary point of contact for VM&P.

(3) For large or complex acquisitions, VM&P and the business area may choose to develop an acquisition charter to serve as a roadmap for the acquisition process. An acquisition charter may include, for example, project background, business and technical requirements, known market or product information and any gaps for which market analysis should be undertaken, the acquisition timeline and dependencies, if any, business area participants in the process, including individuals to be included in the evaluation team, and approvals that will be required.

(d) **Responsibility for Small Purchases.** When a business area undertakes a planned acquisition with an anticipated value of \$10,000 or less (\$20,000 or less for construction) without assistance from VM&P, the business area is responsible for compliance with the Small Purchase Procedure as described in Section 4.2(a) and other provisions of the Policy as they relate to the planned acquisition.

3.3 Vendor Management and Procurement Function

(a) **General.** VM&P undertakes the acquisition process on behalf of the business area, consistent with the business area's requirements and acquisition strategy, and provides expertise to assist the business area with the acquisition. VM&P serves as a resource for the Bank's senior management regarding the Bank's procurement activities and compliance with the requirements of the Policy.

(b) **Responsibilities.** Subject to the phase-in of responsibilities described in clause (d), VM&P is responsible for the following activities with respect to any particular acquisition except small purchases managed by business areas under section 3.2(d):

- (i) Serving as a resource to answer questions about the Policy and the acquisition process;
- (ii) Working together with the business area, developing vendor requirements (including performance measures) that reflect the business and technical needs, specifications for the goods, services, or construction to be acquired, and evaluation criteria for solicitation responses;
- (iii) Coordinating with all Bank Functions that are to receive notice, provide input, review, or approve the planned acquisition (e.g., Accounting, Information Security Office, Credit Risk Management, VIP, Ethics Office, Law Enforcement, Legal-FSTC, Board of Governors (RBOPS)) and ensuring that the results of reviews are provided to the Contract Representative and Legal-FSTC and considered by the business area in the offeror evaluation and in contract documents with the selected offeror;
- (iv) Ensuring that competitive procedures are followed or, when special circumstances warrant, that exceptions are properly documented and approved;
- (v) Identifying prospective offerors in consultation with the business area and considering the Bank's supplier diversity policy;

- (vi) Preparing solicitations and RFIs for review by the business area and, when required, Legal-FSTC, and facilitating the solicitation and RFI processes, including arrangements for offeror presentations and evaluation of responses;
- (vii) Generally, acting as the primary point of contact with offerors during the acquisitions process, and coordinating any negotiations and other contacts with offerors (Section 4.1(h));
- (viii) Negotiating business terms with offerors consistent with the business terms and negotiating strategy approved by the Contract Representative, and coordinating with Legal-FSTC to ensure that its contract negotiations are informed by VM&Ps negotiation of business terms;
- (ix) Coordinating signature of contract documents (by the selected offeror and the Contract Representative) and issuance of purchase orders;
- (x) Compiling records to be maintained in the acquisition file, and maintaining the acquisition file in accordance with the Bank's *Record Management Policy*; and
- (xi) Ensuring that original contract documents are sent for filing in the Bank's Central Records as required by the *Policy on Legal Matters, Including Procedures for Contract Review*.

(c) NPO Liaison. VM&P is the Bank's primary point of contact with the National Procurement Office ("NPO").

(d) Phase-In. VM&P will not perform the responsibilities described in this section with respect to acquisitions of licensed data. Acquisition of licensed data will continue to be managed by the business areas subject to the Policy, with support from the Bank's Intranet Data Group and from VM&P as requested by the business area. VM&P responsibilities with respect to licensed data may be revisited in the future.

3.4 Legal Function, Financial Services, Technology, and Contracts Division

(a) General. Legal-FSTC provides legal support and counsel to business areas and VM&P throughout the acquisition process. VM&P will notify FSTC and provide it an opportunity to review Requests for Information and solicitations to be issued by the Bank prior to their release. All contracts for the purchase of goods, services, and construction are to be drafted or reviewed by FSTC as described in the Bank's *Policy on Legal Matters, Including Procedures for Contract Review*.

(b) Responsibilities. With respect to any particular acquisition, Legal-FSTC is responsible for:

- (i) Reviewing the solicitation or, if special circumstances warrant an exception to competitive procedures, reviewing the documentation supporting the exception;
- (ii) Providing Bank-standard contract terms or agreement templates to be included in solicitations;
- (iii) Reviewing solicitation responses as they relate to any exceptions or proposed modifications to Bank legal requirements or contract terms;

- (iv) Negotiating contracts with selected offerors, incorporating business terms negotiated by VM&P and the Contract Representative, and assisting VM&P and the Contract Representative, as requested, with negotiation of business terms; and
 - (v) Drafting or reviewing contract documents paying particular attention to legal and other risk to the Bank posed by offeror-proposed terms, requirements to address issues identified in due diligence reviews (e.g., information security, credit, conflicts of interest), soliciting review and feedback from the Contract Representative and VM&P, and soliciting approval of contract documents from the Contract Representative.
- (c) Templates. Legal-FSTC will develop and maintain, as appropriate, standard templates to be used by VM&P in the solicitation process.

3.5 National Procurement Office

- (a) General. The Federal Reserve System's National Procurement Office conducts acquisitions, negotiates contracts, and coordinates consolidated purchasing activities on behalf of all Federal Reserve Banks that elect to participate.
- (b) Consideration of NPO Contracts. NPO contracts may be used by the Bank as an exception to competitive procedures under Section 4.3(f) of the Policy. VM&P will facilitate the Bank's evaluation of goods, services, and construction available under NPO contracts relative to the business needs of Contract Representatives. Legal-FSTC will assist VM&P with the evaluation of NPO contracts by reviewing NPO contracts and providing feedback about terms that should be revised to address business and legal requirements of the Bank. The Bank's Contract Representatives will maximize use of NPO contracts where practicable.

Commentary

- (1) The Bank may indicate its intention to participate in an NPO contract by signing a commitment letter with the NPO. A commitment letter indicates the Bank's commitment of funds to the Federal Reserve Bank of Richmond, on behalf of the NPO. Even if the Bank signs a commitment letter, a participation agreement is generally required to establish a vendor relationship between the Bank and the NPO contract vendor.
 - (2) Any modifications to the NPO contract necessary to reflect Bank-specific terms or requirements are to be made in the participation agreement. Legal-FSTC will draft the Bank's participation agreements for NPO vendor contracts.
 - (3) The Board of Governors and other Reserve Banks sometimes enter into contracts for the benefit of some or all Reserve Banks. Participation in a contract negotiated by the Board or another Reserve Bank should follow the same process as participation in an NPO contract.
- (c) Bank Requirements Apply. Vendors under NPO contracts in which the Bank chooses to participate are vendors to the Bank. Accordingly, NPO contract vendors are subject to the requirements of the Vendor Integrity Program (Section 3.8), personnel background investigations (Section 3.9), and Ethics Office procedures (Sections 3.7), as well as information security review when applicable, and Legal-FSTC review of contract documents. VM&P must obtain NPO credit review records for consideration by Credit Risk Management as part of the Bank's determination of responsibility.

3.6 Credit Review

- (a) "Vendor." As used in section 3.6, "vendor" includes an offeror the Bank intends to select as a vendor.

(b) Purpose. The purpose of a credit review of a Bank vendor is to educate the business area about the credit risk profile of the vendor. The scope of review is to measure the risk that the vendor fails during the term of the Bank's contract. Credit Risk Management does not approve or reject vendors, but instead recommends structural mitigation to the contract terms when deemed appropriate. The business area is ultimately responsible for risk associated with the vendor's credit posture.

(c) Thresholds. The Bank requires credit review of Bank vendors under the following circumstances.

- (i) A vendor that provide goods, services, or construction determined to be strategically critical to core Bank operations (*i.e.*, an entity that would be defined as a "Tier 1 Vendor" in the Bank's *Vendor Management Policy*) requires a credit review upon award of a contract and annually while it continues to be a Tier 1 Vendor;
- (ii) A vendor that is not a Tier 1 Vendor requires credit review upon award of a contract, every three years during the term of its contract with the Bank, and upon contract renewal, if the vendor's contract or aggregate business with the Bank meets any one of the following thresholds:
 - (A) The goods, services, or construction to be supplied under a single contract will cost the Bank more than \$250,000 in any one year;
 - (B) The goods, services, or construction to be supplied under a single contract will cost the Bank more than \$500,000 during the scheduled term of the contract;
 - (C) VM&P determines that the aggregate cost to the Bank under all contracts with the vendor totals (i) more than \$250,000 in any one year, or (ii) more than \$500,000 during the remaining scheduled terms of the contracts then in effect; or
 - (D) The contract is a sole-source contract with a scheduled term of more than 1 year and an anticipated value more than \$100,000.

(d) Time of Review. Vendors are subject to credit review at the times described in clause (c) depending on status as a Tier 1 Vendor or a non-Tier 1 Vendor. The value of the contract during a renewal term will be compared to the thresholds in subsection (c) to determine if credit review is required at the time of contract renewal. Credit Risk Management will conduct a financial and contractual risk assessment of the vendor's financial statements through the most recent audited quarter/year-end.

(e) Recent Review. If, following completion of a vendor credit review, the vendor is considered by the Bank for another contract to supply goods, services, or construction for either the same or different business area, Credit Risk Management will leverage its most recently completed credit review of the vendor. Depending on whether updated financial information is available, an updated financial and contractual risk assessment may be required by Credit Risk Management.

(f) Business Review Exception. If the Bank is unable to obtain financial statements from a vendor, the following procedures apply. Tier 1 Vendors that do not provide financial statements to the Bank are subject to a business review by Credit Risk Management. Credit Risk Management will not conduct a business review of vendors that are not Tier 1 Vendors. If the Contract Representative decides to proceed with an acquisition from any vendor not reviewed

by Credit Risk Management, the Contract Representative must obtain approval for such exception from the applicable business area's senior management.

(g) NPO Contracts. For NPO contracts in which the Bank participates, Credit Risk Management will consider a recent credit review conducted by the NPO, if available. Credit Risk Management may use NPO reviews in whole or in part, with appropriate attribution, as an element of its credit review. Credit Risk Management may also conduct a separate credit review to supplement or update the NPO credit review.

(h) Request. VM&P will request credit review on behalf of the Contract Representative by submitting to Credit Risk Management a Request for Vendor Review in the form provided by Credit Risk Management.

Commentary

(1) To the extent an offeror's or vendor's financial statements are publicly available (e.g., as part of 10K or 10Q filings with the U.S. Securities and Exchange Commission), Credit Risk Management will be able to use the publicly-available financial statements to conduct its credit review. For any offeror or vendor not required to make its financial statements publicly available (e.g., private companies), the Contract Representative and VM&P will have to request the financial statements from the offeror or vendor. Contracts with vendors should generally include a requirement that the vendor provide financial statements for post-contract credit reviews as required by this Section.

(2) Where contracts with existing vendors do not require the vendor to provide financial statements, VM&P and Bank employees who manage the vendor relationship should make reasonable efforts to obtain financial statements for post-contract credit reviews as required by this Section. If a contract with an existing vendor is to be renewed, the renewed contract should generally include a requirement that the vendor provide financial statements for post-contract credit reviews as required by this Section.

(3) When Credit Risk Management reviews a vendor under an NPO contract, Credit Risk Management will offer a copy of its credit assessment to the NPO.

3.7 Ethics Office

(a) Conflict of Interest Law. Under federal conflict of interest law (18 USC § 208), Bank employees may not participate personally and substantially in an acquisition that will, to their knowledge, have a direct and predictable effect on their personal financial interests or the financial interests of certain other related parties. Violating this law can result in criminal prosecution and disciplinary action, up to and including termination of Bank employment. Employees should refer to the Bank's *Code of Conduct*, Sections 5.1 and 5.2 and Appendix A, for additional information about the federal conflict of interest law.

(b) Bank Conflict of Interest Policy. In addition to the federal conflict of interest law, employees and contingent workers who participate in acquisitions are subject to the requirements of this Section 3.7.

Commentary

(1) While contingent workers are not subject to federal conflict of interest law, the Bank holds them to the same standard of avoiding conflicts of interest by requiring that they comply with the requirements of this Section.

(2) "Financial interests" include stocks, stock options, bonds, mutual funds that invest in a particular sector, pensions, and deferred compensation plans.

(3) For purposes of Bank policy, "related parties" include the employee's or contingent worker's spouse, domestic partner, minor children, general partner(s), any organization or entity for which the employee or contingent worker is an officer, director, trustee, general partner, or employee, and any person or entity with whom

the employee or contingent worker is negotiating for employment or has arrangements concerning prospective employment. Under Bank conflict of interest policies, the financial interests of related parties are imputed to the employee or contingent worker.

(c) Participation. Personal and substantial participation in an acquisition includes, but is not limited to:

- (i) contributing to, reviewing, or approving any business requirements, solicitation documents, RFIs, or potential vendor lists;
- (ii) participating in any evaluation of offerors, offeror presentations, or proofs of concept, trials, or evaluations of goods or services;
- (iii) participating in or approving any award, decision to renew a vendor contract without a new solicitation, or selection of a vendor without competition under special circumstances as described in Section 4.3;
- (iv) performing any due diligence reviews of offerors, including information security reviews, credit reviews, and background investigations, or providing other advice that may be relied on during the vendor selection process;
- (v) serving as a manager consulted on acquisition procedures, strategies, or decisions; and
- (vi) negotiating, drafting, reviewing, or signing contracts to acquire goods, services, or construction.

(d) Ethics Office Consultation. Bank employees and contingent workers must consult with the Ethics Office before participating in any acquisition in which they have a potential or actual conflict of interest. A conflict of interest or the appearance of a conflict of interest may exist when a Bank employee or contingent worker has a financial interest in one of the offerors, has a relative or friend employed by an offeror, or has received anything of value from an offeror that is not permitted under the Bank's *Code of Conduct*, Section 5.4.

(e) Process. Each Bank employee or contingent worker who participates, or is expected to participate, personally and substantially in an acquisition with an anticipated total value of \$100,000 over the expected term of the resulting contract is required to:

- (i) complete an annual conflicts of interest briefing;
- (ii) certify that he or she (A) does not have a conflict of interest with any offeror; and (B) understands the Gifts, Meals and Entertainment Rule in the Bank's *Code of Conduct*;
- (iii) complete any other acquisition-related training required by the Ethics Office; and
- (iv) consult with the Ethics Office if he or she is unable to meet the certification requirements before participating in the acquisition process.

Commentary

(1) VM&P will collect certifications (which will not disclose details of any actual or potential conflict) and refer to the Ethics Office any employees and contingent workers who indicate they may have a conflict.

(2) The annual conflict of interest briefing is required for all Bank officers and certain Bank employees whether or not they participate in acquisitions. This provision extends the conflict of interest briefing requirement.

(f) Institutional Conflicts of Interest. The Contract Representative and VM&P must consider the Bank's *Institutional Conflict of Interest Policy* as it relates to the acquisition process. VM&P must notify the Ethics Office at the outset of any acquisition with requirements that would place the vendor within the scope of the *Institutional Conflicts of Interest Policy*. The Ethics Office will determine, in consultation with the Contract Representative what, if any, steps should be taken to identify and mitigate potential conflicts of interest (e.g., RFP conflict of interest questions and conflict of interest provisions for the contract with the vendor, including identification of any actual conflicts and remediation or mitigation measures).

3.8 Vendor Integrity Program

(a) General. The VIP is administered by the Federal Reserve Law Enforcement Unit and the Legal Function. The program screens offerors and Bank vendors to help business areas ensure that the entities are responsible (as defined in Part 2) and do not pose a security risk to the Bank.

(b) Scope.

(i) All offerors to which the Bank anticipates making an award and all existing Bank vendors are required to participate in the VIP, except government entities, agencies, or instrumentalities, and other Federal Reserve Banks. Participation is required, regardless of whether or not the offeror or vendor will work on-site at a Bank facility.

(ii) The VIP also applies to all subcontractors engaged by a Bank vendor to provide goods, services, or construction to the Bank, regardless of whether or not the subcontractor will work on-site at a Bank facility. Subcontractors are subject to the same VIP requirements as the vendor.

(c) Registration. All entities subject to VIP (offerors to which the Bank anticipates making an award, existing vendors, and their respective subcontractors) must be registered with the VIP. The Contract Representative, or VM&P on behalf of the Contract Representative, must enter company information into the VIP's database in sufficient time to ensure that the entity is screened in conjunction with the commencement of the vendor's work with the Bank. The Contract Representative or VM&P must also comply with VIP requirements to repeat background investigations throughout the time during which the Bank conducts business with the vendor.

(d) Background Review. After a Contract Representative or VM&P submits an entity to the VIP's database, the VIP, in the ordinary course, will conduct a background review on the entity and its principals and request that the entity agree to conduct business in a manner that would not cause any Bank employee to violate the Bank's *Code of Conduct*. The Federal Reserve Law Enforcement Unit and Legal Function will evaluate the findings of the background review. Entities determined to meet the Bank's standards will be approved under the VIP to do business with the Bank.

(e) Vendor Status. Entities' VIP status is listed for internal access on the VIP's "FRBNY Vendors" webpage. VIP approval is valid for a limited duration as determined by the Federal Reserve Law Enforcement Unit and the Legal Function, usually three (3) years. All Bank vendors must be re-certified upon expiration of their VIP approval if they continue to do business with the Bank.

(f) Cost. Offerors and vendors are ordinarily responsible for the costs associated with conducting the VIP background investigation.

Commentary

- (1) Additional program information can be found at the VIP Intranet website. Offerors awarded business with the Bank and existing Bank vendors should be registered with the VIP through the VIP site. When time is of the essence, the Contract Representative or VM&P may also register offerors before an award is made. The Contract Representatives or VM&P should register an offeror awarded business in the VIP database even if the offeror is an existing vendor already approved by VIP. Registration of an already-approved vendor will ensure that the Contract Representative or VM&P receives timely VIP notifications regarding re-certification requirements.
- (2) VM&P should inform offerors that they may be required to participate in, and pay for, the VIP if they are selected to supply goods, services, or construction to the Bank. The Contract Representative or VM&P may choose to make the VIP documents available to offerors to review in advance of award. The Contract Representative or VM&P may also seek to qualify more than one offeror prior to making an award if time is of the essence.
- (3) The VIP does not replace the credit review requirement (Section 3.6), and it is not the only factor to be considered in determining whether or not an offeror is responsible (Section 5.9). VIP approval does not confer any preference in the vendor selection process or indicate any view about the suitability of a vendor's goods or services for the Bank's needs. The list of vendors maintained by VIP is not intended and should not be used to restrict any prospective vendor list (Section 5.2).
- (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 vendor personnel. (Section 3.9.)

3.9 Personnel Background Investigations

- (a) Requirement. Any vendor personnel may be subject to background investigations by the Federal Reserve Law Enforcement Unit. Vendor personnel may also be subject to additional background investigations required by the United States Department of Treasury if access to any Treasury system is required for the vendor to perform its services.
- (b) Notice to Vendors. VM&P should inform offerors that personnel background investigations may be required. The Contract Representative or VM&P, on behalf of the Contract Representative, must initiate personnel background investigations with the Federal Reserve Law Enforcement Unit when required.

3.10 Information Security Review.

Depending on the nature of the goods or services to be purchased, an information security risk assessment of the selected offeror may be required. More information about the Bank's Vendor Security Assurance Process is available on the Information Security Office's intranet page. VM&P will notify the Information Security Office of planned acquisition for which an information security review may be required. Information security risk assessments should generally be completed by the Bank's Information Security Office before contracting with the selected offeror.

PART 4: METHODS OF ACQUISITION

4.1 Competitive Proposals

- (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 justifying 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.

(2) If the Bank desires to seek information to assist in the preparation of an RFP or to determine in greater detail the nature, capabilities, and availability of goods, services, or construction that the Bank has an interest in acquiring, it may first issue an RFI. An RFI should not be used as a substitute for an RFP. If an 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 an RFI would thereby obtain an unfair competitive advantage over other offerors who will be involved in the RFP process, appropriate steps should be taken to eliminate the unfair advantage.

(3) Competitive proposals are evaluated not only to determine if the items being offered meet the Bank's specifications, but also to compare competing responsive proposals. For example, the quality and price of the goods, services, or construction offered by responsive offerors should be compared, and the evaluation criteria established by the Bank may allow for various criteria to be considered in determining which proposal is most advantageous to the Bank overall.

(4) The competitive proposal method allows an 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 Section 4.1(b)), to ensure that information gleaned from competing proposals is not disclosed to other offerors.

(b) **Request for Proposal.** Proposals shall be solicited through an 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.** An 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 to 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

(1) Ordinarily, a pre-proposal conference should be held soon after the issuance of an RFP. A pre-proposal conference should not be used as a substitute for amending a defective or ambiguous RFP. RFPs should be amended as necessary to correct any defects or clarify any requirements. (Section 5.4.)

(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.

Commentary

(1) 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.

- (i) An RFP may provide for negotiations with offerors following submission of proposals. Negotiations may include bargaining over price, schedule, technical requirements, or other contract terms. Negotiations may also involve discussions that suggest modifications 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 result in modifications to the material terms or specifications of the RFP, the Bank must amend the RFP as set forth in Section 5.4. If negotiations are held, they need not include all offerors, but should include all offerors who are deemed to be responsible and whose proposals are considered reasonably susceptible of being selected for award.
- (ii) 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 offeror. 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 described in clause (i).
- (iii) The decision to begin negotiations of the type described in clause (i) or to initiate contacts of the type described in clause (ii) must be carefully documented by VM&P. In addition, VM&P must include in the acquisition file documentation that reflects the nature of the negotiations or other contacts taking place and with whom the negotiations are conducted or meetings or conversations occurred. Care must be taken to ensure that these negotiations and other contacts are conducted in a

manner that is fair and equitable and does not compromise the integrity of the competitive proposal process or provide an unfair competitive advantage to any offeror.

- (iv) The Bank should notify offerors that the Bank may make an award without obtaining best and final offers and that the Bank reserves the right to negotiate price and other contract terms with the selected offeror.

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. To the greatest extent practicable, contacts with offerors should be planned between the Contract Representative and VM&P and coordinated by VM&P. The Contract Representative should instruct other employees in the relevant business area not to engage in any contact about the acquisition (whether initiated by the Bank employee or an offeror representative) except as planned by the Contract Representative and VM&P. The Bank should instruct offerors in RFPs not to contact any Bank employee other than the contacts identified in the RFP. The Bank may disqualify an offeror who fails to follow this requirement. The restrictions on contacts between the Bank and offerors is not intended, however, to impair communication with a vendor about goods, services, or construction under an existing contract,

(2) While not mandatory, best and final offers (Section 4.1(i)) can be an effective practice to ensure a common understanding of the offeror's final proposal.

(3) 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 such contacts 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 made, the Bank must follow the procedures set forth in Section 5.4.

(4) Generally, auction techniques that involve revealing information about an offeror's standing relative to other offerors are prohibited unless the Bank conducts a reverse auction. See also Section 4.1(b). 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

- (i) The Bank may issue a request for best and final offers as a mechanism to conclude the formal acquisition process. Best and final offers should clarify and document any changes and understandings reached between the Bank and the offerors, including any price changes. If an offeror's original proposal is not considered reasonably susceptible of being selected for award, no best and final offer from the offeror should be solicited, accepted, or considered.
- (ii) A date for submission of the best and final offer should be specified. That date establishes the time after which no mistakes, except apparent clerical ones, may be corrected in the proposal.
- (iii) Receipt of a best and final offer should not preclude the Bank from further negotiations to obtain the best value from the selected offeror.

Commentary

(1) 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 (including a best and final offer, if applicable) is determined to be the most advantageous to the Bank, taking into consideration the requirements and the relative importance of the evaluation criteria as set forth in the RFP. No other criteria should be used in the evaluation. The acquisition file must indicate the basis on which the award is made.

Commentary

(1) While an 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 and the evaluation criteria described in the RFP.

(2) When a proposal that would otherwise be susceptible of award is rejected based on non-responsibility, VM&P should document the basis for rejection.

(3) Appropriate documentation should be maintained indicating how the successful proposal was selected. 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 easy to be reproduced and used in hard copy.

(k) **Notification to Unsuccessful Offerors.** Promptly after award, VM&P must notify unsuccessful offerors in writing. Depending on the nature of the acquisition, initial written notification to the unsuccessful offeror(s) may be limited to the basic facts surrounding the award. However, upon request, the unsuccessful offeror(s) should be given enough information to permit an appeal of the award. 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

(1) The best interests of the Bank and its offerors will be served if timely notification of the 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. Notification to unsuccessful offerors should generally be given after a contract is finalized with the selected offeror.

(l) **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 offerors' 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 or Less.** 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. The Contract Representative may request information from VM&P to assist in determining whether or not a price is reasonable.

Commentary

(1) 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(h).

(b) Acquisitions Over \$10,000 Not More Than \$100,000. Unless special circumstances under Section 4.3 apply, source selection for any acquisition with an expected value more than \$10,000 (\$20,000 for construction) but not more than \$100,000 may be made without following the competitive procedures under Section 4.1 so long as the Contract Representative or VM&P, on behalf of the Contract Representative, solicits a reasonable number of competitive quotations or proposals, normally at least three, in writing or through an e-sourcing tool. Verbal solicitations should not be made, and verbal quotations or proposals should not be submitted, except where exigent circumstances do not allow time to issue solicitations or accept proposals in writing.

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 Parts 3 and 5 of the Policy, should be observed when conducting a small purchase.

(2) An acquisition must not be artificially divided merely to permit the use of small purchase procedures, thus circumventing the procedures required by Section 4.1 or 4.2.

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

(4) Under exigent circumstances, the Contract Representative may determine that a solicitation may be made, and quotations or proposals submitted, verbally. The Contract Representative and VM&P should take appropriate steps to ensure fair treatment of all offerors, including providing the same information to all offerors and allowing all offerors to follow the same process to respond. If verbal solicitations are made or verbal quotations or proposals are submitted, VM&P must document the solicitation and quotations or proposals for the acquisition file. 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 the quotation or proposal received. Written confirmation of the selected quotation or proposal (which may include an email confirmation) should ordinarily be obtained prior to the award of a contract or as soon as practicable thereafter.

4.3 Special Circumstances – Exceptions to Competitive Acquisitions

(a) General. The Bank may use procedures other than those for competitive proposals or small purchases in the circumstances described in this section 4.3 and shall sufficiently document the justification for such use.

Commentary

(1) While in a specified situation an acquisition may be made without any competition, the intent of these guidelines is to require as much competition as is practicable in a given situation. The special circumstances in Section 4.3 illustrate conditions under which the Bank may determine, in the exercise of its business judgment, that the best interests of the Bank are served by acquisitions that do not follow the process described in Section 4.1.

(2) Documentation justifying the use of a special circumstance may include, but is not limited to, information about the special circumstance; the scope of work, specifications, and pricing considerations; the type and total value of the awarded contract; if there were any efforts to engage in a competitive process (including, where available, the dates of all supplier discussions/offers) or the reason(s) why competition was not practical; and any factors considered when determining the reasonableness of the terms. The documentation should include a

memorandum prepared by the Contract Representative, with assistance from VM&P and Legal-FTSC if requested, and approved by a senior officer (Vice President or higher). The approving senior officer must have the level of signing authority required by the Bank's *Authority to Conduct Bank Business Policy* to sign a contract for the expected value of the acquisition. VM&P should retain documentation supporting exceptions to competitive procedures in the acquisition file.

(3) The Bank must comply with requirements in Section 1-049 of the Federal Reserve Administrative Manual when entering into an agreement with a non-Federal Reserve entity for any goods, services, or construction (capital or operating expense) without using a competitive bidding process when the commitments are expected to exceed the threshold stated in the FRAM. Because the notice sent to the Board under FRAM Section 1-049 is to explain the justification for the exception, a separate memorandum as described in comment (2) will not be required if a senior officer with the appropriate level of signing authority approves the notice to the Board.

(b) Sole Source. The goods, services, or construction are available from only one responsible supplier, and no other type of goods, services, or construction 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.

(2) Use of this exception may be appropriate in situations such as the following (these examples are not intended to be all inclusive): unique supplies or services available from only one source or only one supplier with unique capabilities; the existence of limited rights in data, patent rights, copyrights, or secret processes; the control of raw material; or similar circumstances that make the supplies and services available from only one source. In other cases, specific personal expertise or experience on the part of a professional (e.g., an attorney or consultant), may be so unique and suited to the specific needs of the Bank that the professional could be considered a "sole source" of the services. In such cases, however, the reasonableness of the cost of the services should be evaluated.

(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 suppliers. 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.

(4) If purchases of the following goods and services have a value of more than \$10,000, the acquisitions may be made under the sole source exception without further justification that a special circumstance exists: original artwork, memberships in professional organizations, registrations for conferences, meetings, and seminars, postage for U.S. Postal Service delivery, and utilities.

(c) Follow-on Contract. The goods, services, or construction are available from only the original vendor or an award to an offeror other than the original vendor would result in substantial duplication of cost or unacceptable delays in fulfilling the Bank's needs.

Commentary

(1) Follow-on work may involve the continued development or production of a major system or highly specialized equipment or upgrading or continued maintenance of a system.

(2) In some cases, maintenance for equipment or support for software may be utilized under a follow-on contract because the underlying equipment or software architecture is proprietary. Additionally, follow-on work for strategic supplier relationships may not need to be competitively bid. (See Section 4.3(g)).

(3) Under certain circumstances, continuity in the provision of a service (e.g., professional services) is important enough to outweigh the advantages of competition because award to another service-provider would likely cause substantial duplication of costs or unacceptable delays.

(4) Follow-on acquisitions are subject to review confirming that the vendor continues to be responsible, including credit review, background investigations, conflict of interest reviews, information security posture, and other relevant factors.

(d) **Exigency.** The Bank's need for the goods, services, or construction is of such unusual and compelling urgency that the Bank would be demonstrably and significantly injured if the acquisition were to be delayed in order to follow the procedures for competitive proposals or small purchases.

Commentary

(1) When circumstances do not allow time to undertake a formal competitive process, the Bank should take appropriate steps within the time available to evaluate the Bank's options for sourcing the required goods, services, software, or construction.

(2) A contract entered into to address exigent circumstances should be limited to a duration (generally one year or less) that will meet the immediate needs of the exigency giving rise to the acquisition. To the extent possible, the contract should contain a provision that allows for termination for convenience to allow for re-evaluation of the contract after the exigent circumstances have subsided.

(3) Contracts awarded in response to an exigent circumstance may be continued beyond the immediate need in certain circumstances. Such circumstances include, but are not limited to, situations when (i) the Bank would incur substantial duplication of costs or risk of delay in the completion of services or transition to a different supplier; (ii) the contract does not allow for early termination; or (iii) the Bank would incur a substantial penalty for early termination. If the Bank enters into a contract under an exigent circumstance for a term that lasts longer than one year, the Bank should re-evaluate the contract after the exigency subsides as outlined above and at least annually thereafter.

(4) The Bank should document, prior to the acquisition, its justification for using procedures other than those for competitive proposals and any efforts it made to promote competition in the acquisition process. The Bank may finalize such documentation, as necessary, after the contract is signed.

(5) Neither failure to allow sufficient time for a competitive process for a planned purchase, nor postponing a planned purchase, is ordinarily sufficient to justify using the exigency exception.

(e) **Contract Renewal.** Bank policy permits the renewal of an existing contract without a competitive process under appropriate circumstances. It is appropriate to renew a contract when the best interests of the Bank would not be served by the issuance of a new solicitation. Generally, contracts should not be renewed more than once without solicitation of competitive proposals.

Commentary

(1) The documentation justifying renewal in lieu of a competitive proposal or use of the small purchase procedure should take into consideration factors such as frequency of renewal provided in the contract, 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. Contract renewal should not be used to undercut the purpose of the Policy.

(2) While contracts should generally not be renewed more than once without solicitation of competitive proposals, the best interests of the Bank may be served by renewal for multiple consecutive terms, particularly if the vendor continues to be a sole source provider or if the contract is for maintenance or support supplied by the manufacturer or developer of the goods covered by the contract.

(3) Contract renewal is subject to review confirming that the vendor continues to be responsible, including credit review, background investigations, conflict of interest reviews, information security posture, and other relevant factors. (Section 5.9.)

(f) **National Procurement Office Contracts.** If the Bank decides to purchase goods, services, or construction under a contract executed by the NPO, then the Bank need not repeat the

competitive procedures described in the Policy for such an acquisition, provided the NPO itself has followed the Model Acquisition Guidelines when entering into the contract and the NPO procurement process otherwise satisfies the Bank's Policy requirements that supplement the Model Acquisition Guidelines or the Bank takes appropriate steps (including legal review, as applicable) to satisfy other requirements of Policy. (Section 3.5.) The NPO is to advise the Federal Reserve Banks of those contracts which are not entered into in accordance with the Model Acquisition Guidelines.

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. A Bank may utilize an NPO contract through a participation agreement or, if no participation agreement is required, through the terms of the NPO contract.
- (2) It is possible that the NPO could enter into a contract with an offeror not following competitive procedures or an exception consistent with the Model Acquisition Guidelines. For example, an offeror may approach the NPO offering to sell goods at a discount. In such cases, the offer may be formalized in 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. Whenever NPO contracts are not established in accordance with the Model Acquisition Guidelines by a competitive process or as an exception to competition when a special circumstance exists, a Contract Representative may not rely on this exception. The NPO contract may be considered one of the proposals received by the Bank, and an acquisition may be made under the NPO contract only if the NPO contract conforms to specifications and requirements set forth in the Bank's RFP and, when evaluated against other proposals, 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) The requirements of Part 3 of the Policy apply to NPO contracts. Because the NPO procurement process is unlikely to include steps that satisfy the requirements of Part 3 or other vendor reviews, VM&P and the Contract Representative must take appropriate steps to satisfy those Bank requirements.

(g) 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, services, or construction 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 proposals or the small purchase procedure. Establishment of a strategic supplier relationship requires prior approval of a senior vice president or higher level officer.

Commentary

- (1) The Contract Representative should document clearly the Bank or Federal Reserve System 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 or System project, process, or delivery of key services.
- (2) The Bank should typically establish a strategic supplier relationship through a competitive process. 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. Strategic suppliers should also be reviewed to confirm that the vendor continues to be responsible, including credit review, background investigations, conflict of interest reviews, information security posture, and other relevant factors. 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.

(4) Where a system standard has been designated by National IT and use of a specific vendor's goods is required to comply with the system standard, that vendor is considered a strategic supplier under this provision as long as the National IT standard continues. Similarly, if the Bank has designated system standards for systems maintained by the Bank and use of a specific vendor's goods is required to comply with the system standard, that vendor is considered a strategic supplier under this provision as long as the relevant Bank standard continues. Designated system standards may apply to equipment, software, and proprietary data. If the Bank has not previously documented a strategic supplier relationship based on such a system standard, the strategic supplier relationship may be confirmed with the approval of a senior vice president or higher level officer.

(h) **Original Manufacturers and Developers.** The goods, services, or construction are parts or replacement components, upgrades, updates, maintenance, repair, support, or training supplied by the original equipment manufacturer or original software developer for any equipment, building systems, information systems, software, or data previously acquired by the Bank.

Commentary

(1) Similar to a sole-source acquisition, purchase from an original equipment manufacturer or original software developer under the circumstances involves no competition and should be utilized only when justified and necessary to serve Bank needs.

(i) **Legal and Investigative Services.** Selection of a law firm or legal professional to provide legal services to the Bank on a particular matter shall be at the sole discretion of the Bank's general counsel on the basis of the particular needs relating to the lawsuit or other legal matter. Selection of an individual or firm to provide professional dispute-resolution or investigative services to the Equal Employment Opportunity Office on a particular matter shall be at the sole discretion of a Bank EEO Officer on the basis of the particular needs relating to a filed or anticipated complaint.

(j) **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 an award may be made without any competition under the special circumstances described in this Section, the intent of the Policy is to require as much competition as is practicable in a given situation.

4.4 Blanket Purchasing Agreement

The Bank may use a volume or blanket purchasing agreement when the Bank anticipates recurring requirements for the same or similar goods, services, or construction, but cannot predetermine the precise quantities, schedules for delivery of goods or performance of services, or description of services that the Bank will need during a definite period. Blanket purchasing agreements should ordinarily be established through a competitive process.

Commentary

(1) If the volume or blanket purchasing agreement was not competitively bid, subsequent purchases should be made using competitive procedures. In situations where the Bank has multiple blanket purchasing agreements for the same or substantially similar products or services with vendors that have been selected using a competitive process, the Bank may, as a best practice, use a competitive process among the vendors with blanket purchasing

agreements for orders that are anticipated to be \$100,000 or greater if it would achieve additional cost savings or more favorable terms.

(2) The scope of a blanket purchasing agreement may be limited to furnishing specific items or groups or classes of goods or services. A blanket purchasing agreement may also include established unit prices and/or labor categories and labor rates.

(3) A blanket purchasing agreement should not state or imply any commitment by the Bank to place future orders with the offeror, nor may blanket purchasing agreements be exclusive. Blanket purchasing agreements may be used as a convenience to avoid repetitious negotiation of general terms and conditions, but blanket purchasing agreements may not be used in any manner to circumvent competition. For example, blanket purchasing agreements may not be used to acquire goods or deliverables that exceed the scope set forth in the agreements.

(4) The period of performance for any statement of work under a blanket purchasing agreement must begin prior to expiration of the blanket purchasing agreement, and the total dollar amount of the statements of work must not exceed the ceiling amount, if any, of the blanket purchasing agreement.

PART 5: ISSUES IN SOURCE SELECTION

5.1 Release of Acquisition Information

(a) Before Solicitation

(i) Generally, specific information concerning proposed acquisitions must not be released to any offeror before solicitation. Except as provided in clause (ii), if information is to be released to any offeror, the information should be provided to all prospective offerors at substantially the same time so that one prospective offeror is not given an unfair advantage over another.

(ii) 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 an 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. Normally, an outside party that assists the Bank in preparing RFP specifications should not be allowed to participate in the competitive process. A party who has assisted the Bank in preparing an RFP may only be permitted to participate as an offeror if VM&P and the Contract Representative determine that the specifications do not favor the party or the party's goods, services, or construction and that the party's participation as an offeror is in the best interest of the Bank.

(b) Between Solicitation and Award

(i) Until an award is made, information contained in the proposals and any other information concerning the award should be disclosed on a need to know basis to Bank personnel and to the Bank's consultants, contractors, or agents providing services related to the acquisition. Such information should be disclosed to the fewest number of people consistent with an orderly, efficient approach to handling the acquisition 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.

(ii) Until an award is made, contacts with offerors should be controlled and planned by the Contract Representative and VM&P consistent with the Policy.

(c) After Award

(i) 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 that seeks to restrict proposal information from disclosure must identify any materials for which confidentiality is requested and provide an appropriate justification for the request. The Bank will determine whether or not information is exempt from disclosure under the *Freedom of Information Policy*.

(ii) Unsuccessful offerors who request additional information regarding the contract award may be provided general information, such as 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.

5.2 Prospective Vendor Lists

(a) Prospective Vendors. Lists of prospective vendor should be established and maintained by VM&P to assure access to adequate sources of goods, services, or construction. Prospective vendors 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 prospective vendor who does not submit a proposal or otherwise respond to a solicitation when requested may be removed from the list.

(b) Consideration of Diverse Suppliers. VM&P and 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. VM&P will assist the Contract Representative to identify diverse suppliers, and the Contract Representative will be presumed to have made a reasonable effort if he or she works with VM&P to identify at least one diverse supplier to include on the prospective vendor list for the acquisition.

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

(d) Prequalification. Prospective vendors may be prequalified for particular types of goods, services, or construction, or for a particular acquisition. Prequalification means that the Bank considers a prospective vendor to be responsible and capable of fulfilling the Bank's requirements. Prequalification is not a conclusive determination of responsibility, and a

prequalified vendor may be rejected as not responsible based on subsequently discovered information. Similarly, a prior failure to prequalify will not prevent a subsequent determination that an offeror is responsible with respect to any particular acquisition.

5.3 Standards for Developing Specifications; Proofs of Concept

(a) Specifications. Plans, drawings, specifications, standards, or purchase descriptions for an acquisition should seek to promote overall economy for the purposes intended, encourage competition in satisfying the Bank's needs, and should not be unduly restrictive.

Commentary

(1) Contract Representatives and VM&P should make every effort to avoid specifications that are based on unnecessarily 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) Use of "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 only to offerors able to supply that product.

(3) Operating authority of the offeror, applicable license and permit requirements, and insurance coverage should also be taken into consideration during preparation of RFPs or solicitations for small purchases. Because operating authority requirements sometimes inhibit competition among prospective offerors, those requirements should not be a prerequisite for submitting responses. The RFP or solicitation should, however, clearly state that prospective offerors 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.

(b) Proofs of Concept or Evaluations. Proofs of concept, product trials, and product evaluations may be conducted either as part of an RFI or as part of an RFP. When conducted as part of an RFI, the proof of concept, product trial, or product evaluation should generally be undertaken to provide information about the types of products available in the market that may assist the Bank in planning. Competitive procedures should follow a proof of concept, trial, or evaluation conducted as part of an RFI, and care must be taken to avoid developing purchase requirements that narrowly describe specific goods evaluated. When conducted as part of a solicitation, the proof of concept, product trial, or product evaluation should be used as part of the Bank's evaluation of the offeror against the Bank's requirements as reflected in the solicitation. Performance of the goods in the proof of concept, product trial, or product evaluation should be identified as one of the Bank's evaluation criteria.

5.4 Amendment of Solicitation

(a) Any change to a solicitation is to be made by written amendment to the solicitation. Amendments made before the time for proposal submission must be provided to all prospective offerors to whom the solicitation has been furnished and should be issued to provide a reasonable time for all prospective offerors to respond. Amendments to a solicitation made after the opening of proposals generally should be provided to all offerors. If, however, negotiations have already been held with certain offerors, then the amendment ordinarily would be provided only to those offerors unless the amendment causes the Bank to reconsider whether other offerors could be susceptible of award. See Section 4.1(h). An amendment should be used to furnish information if the lack of such information would be prejudicial to uninformed offerors.

5.5 Cancellation of Solicitation and Rejection of Offers

(a) A solicitation may be cancelled, and proposals may be rejected, in whole or in part as specified in the solicitation for any reason. VM&P must include in the acquisition file documentation of the reasons for any cancellation or rejection.

Commentary

(1) 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, including modified proposals, received after the exact time set for submission 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 proposal 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 or technical error attributable to the Bank's e-sourcing tool or other systems. Prior to the scheduled submission deadline, the Bank may extend the time for submission of proposals or modifications if it determines that it is in the Bank's 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 shall be given the opportunity to resubmit the proposal. In the event 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.

Commentary

(1) 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 untimely receipt was the result of technical problems or whether the offeror committed an error.

(b) Notification to Late Offeror. When a proposal or modification is received late and cannot be considered, VM&P should promptly notify the offeror accordingly. A late proposal or modification not considered for award must be held unopened or otherwise unread, unless opened or read for identification, until after award, and it then may be retained with other unsuccessful proposals or returned to the offeror. Any bond or guarantee shall be returned as soon as possible.

(c) Records. The following shall, if available, be included in the acquisition file with respect to each late proposal or modification:

- (i) a statement or record of the date and hour of mailing, submission, or delivery (if provided to the Bank by the offeror);
- (ii) A statement or record of the date and hour of receipt by the Bank; and
- (iii) An explanation of the circumstances if the late proposal was considered for award due to Bank mishandling or technical error attributable to the Bank's e-sourcing tool or other systems 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 or 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 to be 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. If the Contract Representative or VM&P discovers clerical errors that are apparent on the face of the proposal, or if an offeror brings a clerical error to the attention of the Bank, the offeror may be permitted to correct the clerical error. VM&P will determine in its reasonable judgment if information included in a solicitation response is, in fact, a clerical error or if the offeror made a mistake in judgment.

(b) Other Mistake. When VM&P or the Contract Representative suspects that there may be a non-clerical mistake in a proposal, the Contract Representative may choose to 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 requests all offerors to submit best and final offers, an offeror who has made any mistake may be given an opportunity to correct the mistake in the best and final offer. After the receipt of best and final offers, no mistake in proposals or best and final offers, 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 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 in a proposal.

(3) While the Policy allows for errors other than clerical errors to be corrected in a best and final offer, the Policy does not require the Bank to request best and final offers from all offerors. Therefore, an offeror that makes non-clerical errors in its proposal may not have the opportunity to correct mistakes unless the Bank requests all offerors to submit best and final offers or the offeror's proposal is reasonably susceptible of selection despite the non-clerical mistake.

(4) 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 determines to be responsible.

(b) **Determinations.** The Bank's signing of a contract indicates the Bank's determination that the prospective offeror is responsible with respect to the contract. When an offer is rejected because the offeror is found not to be responsible, VM&P must include in the acquisition file documentation of the reasons for the determination of the offeror is not responsible. 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 the 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." 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.g., no civil or criminal violations or material regulatory or administrative actions);
- (E) Necessary organization, experience, accounting and operational controls and technical skills, or the ability to obtain them;
- (F) 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 under 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 offeror are normally considered separate entities in determining whether the entity that is to perform the contract meets the applicable standards for responsibility. The Contract Representative may, however, consider the past performance and integrity of the offeror's affiliates when they may adversely affect the offeror's responsibility. Entities are considered affiliates if one directly or indirectly 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 about the offeror's past record of contract performance. It may be appropriate to discuss information obtained by the Bank with the prospective offeror before a determination of responsibility is made. Normally, a prospective offeror should be informed if a preliminary determination of non-responsibility is made, and the offeror should be given an opportunity to respond before a final 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, that may be used to support determinations of responsibility include, for example:

- (A) The results of reviews conducted by the Bank as part of the acquisition process, including credit review, conflict of interest evaluation, VIP, personnel background investigations, and information security reviews;
- (B) Records and data on past experience, including verifiable knowledge of personnel within the Bank;
- (C) Information from the prospective offeror, including bid or proposal information, questionnaire responses, financial data, information on production equipment, and personnel information; and

- (D) Other sources such as other Reserve Banks, credit rating agencies, publications, suppliers, subcontractors, and customers of the prospective offeror, and business and trade associations.

(7) After the Bank contracts with a vendor, Bank employees who work with the vendor or manage the vendor relationship are expected to communicate to VM&P any information the Bank employee may learn that could bear on a future evaluation of the vendor's responsibility. For example, a Contract Representative must consider whether or not the vendor continues to be "responsible" at the time of a proposed contract renewal. VM&P will communicate the information, as appropriate, to Legal - FSTC, the Ethics Office, Credit Risk Management, and the VIP. In addition, Bank employees who become aware of any illegal or improper conduct by a Bank vendor must notify the VIP or the Federal Reserve Law Enforcement Unit promptly.

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 reported to the Bank's General Counsel and General Auditor.

5.11 Protests

(a) Protest Claim. An actual or prospective offeror who claims to be aggrieved in connection with a solicitation or award of a contract may submit a protest in writing to VM&P. Protests must be submitted promptly following the award notice.

(b) Resolution. When a protest cannot be resolved or settled by mutual agreement between the protesting party and VM&P, the protesting party may submit the protest to the First Vice President or his or her designee for a decision. Decisions by the First Vice President or his or her designee are final.

Commentary

- (1) A procedure for permitting protests by offerors 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, VM&P and the Contract Representative should review the facts pertinent to the claim and secure assistance from Legal-FSTC and other advisors as appropriate. If the protest is referred to the First Vice President, VM&P will prepare for review by the Contract Representative and Legal-FSTC data, documentation, information, and support to be provided to the First Vice President or his or 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 in the acquisition file and disposed of by VM&P in accordance with the Bank's record retention policies (Section 6.4). If an e-sourcing process was used, electronic acquisition records must be retained either in hard copy form or in electronic form in a manner that will allow them to be easily reproduced and used in hard copy.

Commentary

- (1) Because an e-sourcing process is conducted pursuant to a contract with an e-sourcing service provider, effective access to electronic records stored by the e-sourcing provider 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, the Bank should retain a hard copy of appropriate records or maintain the records in electronic form in a manner that will allow them to be easily reproduced by the Bank and used in hard copy.

5.13 Small Business Program

(a) General.

- (i) To encourage participation by small businesses, the Contract Representative should make a reasonable effort to include small businesses in solicitations. VM&P maintains information about any small business requesting consideration for future contract opportunities for use by the Contract Representatives and will work with Bank Contract Representatives, current and prospective vendors, and external organizations to promote opportunities for small business in the Bank's acquisition activities.
- (ii) For purposes of this Small Business Program, a Contract Representative and a Bank contractor, acting in good faith, may rely on written representations by an entity regarding its status as either a small business or a disadvantaged small business. If it is determined that an offeror or vendor (including a subcontractor to a Bank contractor where subsection (d) applies) has misrepresented its status, the offeror or vendor may not be permitted to take part in future acquisitions.
- (iii) Subsections (b) and (c) of the Small Business Program shall not apply to procurements for services that are personal in nature. A contract is personal in nature if it so far involves the element of personal knowledge or skill or personal confidence that the contract can be performed only by a particular individual who is the Bank's vendor or who is employed by or associated with the Bank's vendor.

(b) Set-Asides. The Bank may, at its discretion, set aside for small businesses a particular acquisition. If the set-aside results in a reasonable proposal or quotation from only one responsible small business, the award will be made to that business. If no reasonable proposal or quotation is received from a responsible small business, the set-aside may be cancelled and the acquisition made from other than a small business.

(c) Preferences.

- (i) If a responsible small business submits a responsive proposal in a Bank competitive procurement, the Contract Representative will select the proposal provided: (a) the proposal would be selected under the applicable acquisition procedures in the absence of any preference; or (b) the small business proposal is comparable to the proposal that would otherwise be selected under the criteria and procedures specified in the acquisition.
- (ii) A proposal should be deemed "comparable" if the proposal from the small business would be selected under the criteria and procedures of the competitive procurement if the cost of the small business proposal were adjusted (for comparison purposes only) in the following amounts: (i) for acquisitions up to \$500,000, the cost is reduced by three percent; or (ii) for acquisitions over \$500,000, the cost is reduced by \$15,000, plus one percent of the amount by which the cost exceeds \$500,000.
- (iii) For purposes of this program, the term "competitive procurement" includes any acquisition expected to exceed \$100,000 that is made by obtaining competitive quotations or proposals. The Bank, at its discretion, may apply the preference described in this section to acquisitions that do not meet this dollar threshold and that are made using a competitive process.

(d) Subcontracting

- (i) Each competitive acquisition that has subcontracting possibilities and the total cost of which is expected to exceed \$500,000 (\$1,000,000 for construction) will specify as an evaluation criterion the existence and quality of the offeror's subcontracting plan, including (i) plans for using small companies, and (ii) procedures for documenting compliance with the plan.
- (ii) In addition, when contracting for general construction services, the Bank has a policy of assisting Disadvantaged Small Businesses. Each solicitation for general construction services, therefore, will consider the existence and quality of the offeror's subcontracting plan for using Disadvantaged Small Businesses as well as small businesses, and its procedures for documenting compliance with the plan. A responsive proposal with a subcontracting plan involving Disadvantaged Small Businesses will be given preference over responsive proposals with a subcontracting plan involving small businesses that are not Disadvantaged Small Businesses. The basis for establishing this Disadvantaged Small Business preference will be re-examined periodically by the Bank and, absent a determination that the preference is still warranted, this aspect of the Small Business Program will sunset on June 2015.
- (iii) In determining whether subcontracting possibilities exist, the Contract Representative may consider whether firms engaged in the business of furnishing the goods, services, or construction to be acquired 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. A determination that no subcontracting possibilities exist must be documented.
- (iv) Subcontracting plans are not required from small businesses.

(e) Program Administration and Recordkeeping

- (i) VM&P will coordinate with, and assist Contract Representatives in the implementation of the Small Business Program including helping the Contract Representatives consider the needs of small businesses when formulating acquisition procedures and solicitation documents. Such consideration may include structuring the acquisition in a way to make it more accessible or feasible for participation by a small business. Consideration may also be given to use of a set-aside.
- (ii) The Bank, through various functions, provides the following support to small businesses:
 - (A) makes materials available that describe the general nature of the Bank's business;
 - (B) provides contact information for VM&P;
 - (C) provides information regarding proposed purchases; and
 - (D) conducts outreach programs aimed at providing training and other opportunities.
- (iii) VM&P will maintain reasonable records documenting that the Bank's practices, procedures, and acquisitions are being conducted in support of the Small Business

Program reflected in this Section 5.13 and will keep Bank senior management informed about activities taken pursuant to the Small Business Program. The records to be maintained will be consistent with directions from the Board of Governors.

PART 6: WRITTEN CONTRACTS

6.1 Contract Requirement

Contracts for the acquisition of goods, services, or construction are subject to the Bank's *Policy on Legal Matters, Including Contract Review*. VM&P and the Contract Representative must consult with Legal-FSTC about contract requirements for each acquisition except acquisitions for which Legal-FSTC has approved a template and process to proceed without additional legal review.

6.2 Term of Contract

The term or duration of a contract will ordinarily be based upon factors that include, among other things, market conditions, the complexity and size of the acquisition, the nature of the goods, services, construction, 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.

Commentary

(1) In order to preserve the advantages of a competitive acquisition process, the length of the term should take into account the best interests of the Bank, balancing continuity of service, pricing advantages of a multi-year commitment, and administrative efficiency against the prospect for market changes.

6.3 Contract Execution

(a) Written Contracts. Written contracts for the acquisition of goods, services, or construction must be signed by an officer with the appropriate level of signing authority for anticipated value of the contract as described in the Bank's *Authority to Conduct Bank Business Policy*.

(b) Ancillary Documents. If the contract requires the vendor to provide evidence of insurance, certificates of insurance should be obtained when the contract is signed by the vendor. VM&P and the Contract Representative may request assistance from Legal-FSTC to determine when certificates of insurance should be obtained.

6.4 Contract Maintenance

(a) Contract Data Repository. It is the responsibility of VM&P to assemble and maintain all relevant documentation concerning the acquisition into an acquisition file. In addition, VM&P will maintain a central repository of data and supporting documentation about procurement contracts.

(b) Signed Contracts. Signed contracts are to be retained in the Bank's Central Records, as further described in the Bank's *Policy on Legal Matters, Including Contract Review*.

(c) Retention Period. Acquisition files and signed contracts are to be retained for the duration required by the Bank's record retention schedules in accordance with the Bank's *Records Management Policy*.

6.5 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) applies to any 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 Service Contract Act must contain certain provisions with respect to wages and fringe benefits. VM&P or the Contract Representative should refer any questions about the Service Contract Act or its application to a particular acquisition to Legal-FSTC.