

# FORT SCHUYLER MANAGEMENT CORPORATION

## PROCUREMENT GUIDELINES POLICY

### Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Contracts

#### 1. PURPOSE

The following guidelines (the “Guidelines”) apply to the use, awarding, monitoring and reporting of Procurement Contracts, as defined herein, by the Fort Schuyler Management Corporation (“FSMC” or the “Corporation”).

In these Guidelines, a person, firm or corporation who wishes to provide goods and/or services to FSMC may be called a “vendor” or “offeror” or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming a FSMC vendor, a “respondent.”

#### 2. DEFINITIONS

- A. “Procurement Contracts” are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the FSMC office, facilities, operations and maintenance and capital projects, including but not limited to goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2.C below. Loans and grants are not Procurement Contracts.
- B. “Non-Procurement Contracts” include direct placement of advertisements with radio, television, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which FSMC participates.
- C. “Services Contracts” are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships or firms who are not and do not employ officers or employees of FSMC) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by a consultant for FSMC) and construction management. Non-Personal Services include, but are not limited to: skilled or unskilled temporary personnel, including clerical office staff, technicians or engineers working under FSMC supervision; maintenance, repairs, and printing services. Construction and construction related services consist of craft labor

and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services engaged in the building of or the permanent alteration to real property.

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient FSMC staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of these factors.

- D. “Goods” include equipment, material and supplies of any kind. Procurement Contracts that include both equipment and services may be classified as “Equipment,” where 60% or more of the total projected contract value will be for the purchase of equipment, material or supplies.
- E. “Evaluation of Proposals,” as further set forth in Section 4 below, includes as evaluating factors FSMC’s consideration of a bidder’s skill, judgment and business integrity.
- F. “Contact” is any oral, written or electronic communication with FSMC under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.
- G. “Relative” is any person living in the same household as the FSMC employee or any person who is a direct descendant of the FSMC’s employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines.
- H. “Minority and Women-owned Business Enterprise” (“M/WBE”) is defined as any New York State-certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in N.Y. Executive Law Article 15-A, and pursuant to the definition found in N.Y. Executive Law § 310.
- I. “Small Business” is a business that is resident in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.
- J. “Single Source” is a procurement in which FSMC, upon written findings setting forth material and substantial reasons, may award a contract (or amendment to a contract) to one offeror over another that can supply the goods or services.
- K. “Sole Source” is a procurement in which only one offeror is capable of supplying the required goods or services.

### **3. SOLICITATION REQUIREMENTS**

- A. Preparation of the solicitation of proposals for Procurement Contracts is the responsibility of the initiating department. Except as otherwise authorized by these Guidelines, quotes should be solicited from a minimum of three providers and/or firms (if available) for Procurement Contracts valued under \$25,000 and a minimum of five providers and/or firms (if available) for Procurement Contracts valued at \$25,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation. In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence (including, but not limited to, the bidder's skill, judgment and business integrity) to supply the particular goods and/or perform the particular services required.
- C. FSMC may withdraw any pending solicitation (including but not limited to RFPs and RFQs) at any time, for cause or no cause. Any person or entity submitting any responsive document to FSMC does so at its own cost or expense and will not be reimbursed by FSMC for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized FSMC representative.
- D. In order to promote the use of Minority and Women-owned Business Enterprises ("M/WBEs"), FSMC will endeavor to solicit offers from M/WBEs known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definition of a NYS-certified M/WBE is in Section 2.H.
- E. To foster increased use of M/WBEs, small businesses and recycled or remanufactured commodities, a single proposal may be sought, negotiated and accepted for purchases not exceeding \$200,000, in the aggregate including all amendments, of (i) goods and/or services from a NYS-certified M/WBE (as defined in Section 2.H) or Small Business (as defined in Section 2.I) or (ii) goods and/or technology that is recycled or remanufactured, where such vendors offer a reasonable price for such goods and/or services. The award of such proposal requires the written approval of the CFO's designee for procurement. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the CFO's designee for procurement. Furthermore, the award of such procurement contracts will be noticed on the *Contract Reporter* website, as further set forth in Section 3.H.
- F. It is the policy of FSMC to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. In furtherance of this goal, the following definitions and actions apply:
  - 1. "New York State Business Enterprise" is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form

of exchange, goods sought by FSMC that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by FSMC that are substantially performed within New York State as further described in Public Authorities Law § 2879.

2. “New York State resident” is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law § 2879.
  3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by FSMC that are substantially produced outside New York State, or services other than construction services, sought by FSMC that are substantially performed outside New York State as further described in Public Authorities Law § 2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
  4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.
  5. FSMC shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by FSMC’s President and CEO if the CEO determines in writing that it is in the best interests of FSMC to do so.
- G. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; milestone dates; all other applicable FSMC requirements and any special methods or limitations that FSMC chooses to govern the work.
- H. For all Procurement Contracts with a value equal to or greater than \$50,000 (except for those contracts noted below), FSMC will, prior to soliciting proposals, submit the following information for publication on the New York State *Contract Reporter* website, ([www.nyscr.ny.gov](http://www.nyscr.ny.gov)) (unless such posting would serve no useful purpose): (1) FSMC’s name and address; (2) the solicitation number; (3) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (4) the address where bids or proposals are to be submitted; (5) the due date for bids or proposals; (6) a description of any eligibility or qualification requirements or preferences, as applicable; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture or coproduction

arrangement; (8) any other information deemed useful to potential contractors, as applicable; (9) the name, address, and phone number of the person to be contacted for additional information and (10) a statement as to whether the goods and/or services sought have, in the immediately preceding three-year period, been supplied by a Foreign Business Enterprise. The due date for bids or proposals will be a minimum of 15 business days after the date of publication of such notice on the Contract Reporter website, except where a shorter period is specifically authorized by law. For Procurement Contracts resulting from a Request for Proposal process, FSMC will submit the results of the bid opening, including the names of firms submitting proposals and the name/s of the awardee/s, for inclusion on the Contract Reporter website. For all other Procurement Contracts, the name of the awardee will be submitted.

This section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.K, (ii) Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date, and/or (iii) Procurement Contracts awarded to not-for-profit human services providers. (See Article 4-C, Economic Development Law)

Certain Procurement Contracts may require purchases: (1) on a spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. Such purchases are exempted from the above-described advertising requirements subject to the approval of the CFO's designee for procurement, and/or the head of the initiating department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by FSMC.

Notwithstanding the foregoing, submittal of a notice / announcement of award for inclusion on the Contract Reporter website is required for Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such contracts not exceeding \$200,000 awarded to Small Businesses or NYS-certified M/WBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured. Such notice shall specify the name of the awardee.

- I. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an FSMC representative, a "competitive search" will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The initiating department will gather information from potential sources, that will include a description of the consultant/firm's qualifications, résumés of key personnel, past experience and proposed billing rates.

- J. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
  2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
  3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
  4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
  5. The contract is awarded to a Small Business or to a NYS-certified M/WBE firm for purchases not exceeding \$200,000, pursuant to Section 3.E.
  6. The contract is for the purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$200,000, subject to the approvals stated in Section 3.E.
  7. The goods and/or services are available through centralized contracts held by the New York State Office of General Services. Information about centralized contract offerings can be accessed at <https://www.ogs.state.ny.us/purchase/SearchBrowse.asp>.
- K. A Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:
1. A threat to the health or safety of the public or FSMC employees or workers.
  2. Proper functioning of FSMC facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- L. Whenever an initiating department determines that a Procurement Contract should be awarded on a Single Source, Sole Source, or an emergency basis, the head of the department will provide a written statement for the procurement record explaining the reasons therefor. The award of such Procurement Contracts, regardless of value, requires the written approval of the Chief Compliance Officer, except as noted in Section 3.H.
- M. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the President and CEO or the COO prior to processing by the Procurement Department.
- N. When a procurement is made on a non-competitive basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief

Executive Officer and Chief Financial Officer of FSMC stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. The following definition shall apply: “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by internal appraisals, industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the CFO’s designee for procurement.

- O. It is the policy of FSMC to discourage improper communications intended to influence an FSMC procurement. To that end, FSMC shall designate a person or persons who may be contacted with respect to each FSMC procurement. The bidders/contractors or persons acting on their behalf, shall only contact FSMC’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period. The “Restricted Period” is the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from bidders/contractors intending to result in a procurement contract with FSMC and ending with the final contract award.
- P. In furtherance of FSMC’s commitment to ensure transparency and accountability of its operations, every member, officer or employee of FSMC who is contacted by a lobbyist is required to make a contemporaneous record of such contact.
- Q. FSMC shall record in a database certain appearances between FSMC and individuals, firms or other entities (excluding elected officials and representatives of federal, state and local agencies and authorities) relating to the procurement of a contract, with a value of \$25,000 or more, for real property, goods or services. Appearances are defined as an interaction through an in-person meeting or a video conference between covered individuals. Appearances related to emergency procurements and disposal of property through public auctions are excluded, as are appearances that take place during the formal “Restricted Period.” Covered individuals at FSMC means an individual at FSMC who has the power to exercise discretion or advises someone who exercises discretion. A covered individual outside of FSMC means both “external” (e.g., a lobbyist) and “internal” (e.g., sales representative) representatives of an entity, individuals appearing on behalf of him/herself, advocacy groups or organizations or entities representing the interests or concerns of the organization or entity or of its members. All such appearances must be promptly reported to FSMC’s Compliance Office for recording in the database.

#### **4. EVALUATION OF PROPOSALS**

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the

bidder (including, but not limited to, the bidder's skill, judgment and business integrity), the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the CFO's designee for procurement. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award and (3) negotiating with the low bidder(s), as determined by the CFO's designee for procurement, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited to: the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are, where applicable to the procurement: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the FSMC work and the ability to provide any needed advanced techniques such as simulation and modeling; and overall, the bidder's skill, judgment and business integrity. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet M/WBE goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.
- C. For Services Contracts (as defined in Section 2.C of these Guidelines), cost, the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract.
- D. For Procurement Contracts other than Personal Services (as defined in Section 2.C of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents.
- E. FSMC shall not award a Procurement Contract (as defined in Subsection 2.A of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)



A bidder's/contractor's knowing and willful violation of FSMC's policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor.

More than one determination of non-responsibility in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management, and should be based on such a proposal providing a clear advantage to FSMC over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited to: improved delivery schedules that will reduce outages; longer warranty periods; improved efficiency over the usable life of the equipment; reduced maintenance costs; and overall, the bidder's skill, judgment and business integrity.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, FSMC may diverge from the specifications of any solicitation if, after review of the proposals responsive to such solicitation, FSMC deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings.

## **5. RECOMMENDATION OF AWARD**

A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:

1. Lump sum and/or unit prices for equipment and construction work.
2. Hourly or daily rates for personnel.
3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.

B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any.

## **6. AWARD OF CONTRACT**

- A. Services Contracts to be performed for a period of more than 12 months are approved and reviewed annually by the FSMC Board. Services Contracts for a period of less than 12 months are approved by authorized designees. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Board at the request of the initiating department and will be reviewed by the Board annually. Extending a contract for services, that has previously been approved by the Board, for a cumulative term of more than 12 months requires further Board approval. Extending a contract, previously approved by the Board, for 12 months or less requires approval by an authorized designee and concurrence by the CFO's designee for procurement.
- B. For Services Contracts to be performed for a period of more than 12 months that must be awarded prior to the next quarterly Board meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total value, such contract must be approved by the appropriate management. Such contract is subject to the Board's approval, at the next quarterly Board meeting. If such approval is not granted, the contract will be terminated immediately.
- C. A contract or contract task is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Board-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved.
- D. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions.
- E. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed \$100,000, the initiating department Head, with the prior concurrence of the CFO's designee for procurement, may authorize extending such contract, subject to the Board ratifying such action as soon as practicable.
- F. When the total estimated contract value or the value of the extension exceeds \$250,000, interim approval by the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Board ratifying such action as soon as practicable.
- G. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value

exceeds \$250,000, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the CFO's designee for procurement, may authorize the commencement of such services. The initial compensation limitation may not exceed \$250,000. Such contracts will be subject to Board approval, which will be solicited at their next scheduled Board meeting.

- H. All contracts for construction and construction related services of \$1 million or greater to be paid with New York State funds are required to be reviewed by the Office of the New York State Comptroller (OSC).
- I. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution.

## **7. CONTRACT PROVISIONS**

- A. The following standard forms of contracts shall be maintained by the CFO's designee for procurement: purchase order format (for standard procurements of goods and/or services); furnish-and-deliver format (for major equipment purchases); long form agreements (for consulting services) and maintenance agreement formats; contract work orders (for construction work of small magnitude); construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services.

FSMC departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the CFO's designee for procurement, who is solely responsible for requesting proposals.

- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.

1. Schedule of Services or Specifications
2. Time of Completion
3. Compensation or Itemized Proposals
4. Relationship of Parties
5. Delays
6. Termination
7. Changes in the Work
8. Claims and Disputes
9. Warranty
10. Insurance
11. Records, Accounts, Inspection and Audit

12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Entire Agreement

#### Contract Attachments

1. Compensation Schedule
  2. Schedule of Services or Specifications
- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services. The above restrictions shall not apply where:
1. The vendor is the sole source or single source of the product or service;
  2. More than one vendor has been involved in preparing the specifications for a procurement proposal; or
  3. The originating FSMC department determines in writing that the restrictions are not in the best interests of FSMC. Such originating department shall obtain the approval of the applicable Business Unit Head or equivalent(s), the CFO's designee for procurement, Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.

### **8. CHANGE ORDERS**

- A. Change Orders to existing contracts are justified in the following cases:
1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
  2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
  3. To accommodate emergency conditions, defined in Section 3.K herein, that require the immediate performance of work by a firm already under contract; and
  4. When rebidding would not be practical or in the best interests of FSMC's customers.

- B. All Change Orders must be approved by the contract initiator, and should include specific schedules for completion of work at the earliest possible time.

**9. CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES**

- A. Former FSMC officers and employees are eligible to be considered for employment as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines and as set forth in this Section 9.
- B. No FSMC officer or employee is eligible, within a period of two years after the termination of FSMC employment to appear or practice before FSMC or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before FSMC.
- C. No FSMC officer or employee is eligible, at any time after the termination of FSMC employment, to appear, practice, communicate or otherwise render services before FSMC or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of employment, or which was under his or her active consideration.
- D. No FSMC employee who is involved in the award of FSMC grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- E. No FSMC employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- F. No FSMC employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which the FSMC employee or a Relative of such FSMC employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
- G. For purposes of this Section 9.E, the term "Relative" is defined in Section 2.G of these Guidelines ("Definitions").

## 10. **PROCUREMENT RECORD AND REPORTING**

### A. **Procurement Record**

FSMC must maintain records of Procurement Contracts, including bidders' names, the selection processes used and the status of existing contracts, including goods provided and/or services performed and fees earned, billed and paid.

A statement describing the basis for a determination of a bidder's/contractor's non-responsibility and FSMC's decision not to award a bidder/contractor the Procurement Contract must be included in the procurement record. All forms entitled "Record of Contract" shall be included in the respective procurement record. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the procurement record.

### B. **Procurement Report**

After the end of each calendar year, the CFO's designee for finance will prepare and submit an annual report to the Board for its approval that will include:

1. A copy of the Guidelines;
2. An explanation of the Guidelines and any amendments thereto since the last annual report;
3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
4. A list of fees, commissions or other charges paid;
5. A description of work performed, the contract number, the date of the contract and its duration, the name, address and NYS-certified M/WBE designation (if any) of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
6. The type of contract (equipment, services, personal services or construction);
7. The method of awarding the contract (e.g., competitive bidding, Sole Source, Single Source or competitive search);
8. The reasons why any procurements with a value greater than \$50,000 were not noticed in the Contract Reporter; and
9. The number of bids received.

The annual procurement report shall be posted on FSMC's website and copies shall be made available to the public upon reasonable written request therefor.

**11. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS**

- A. These Guidelines are intended for the guidance of officers and employees of FSMC only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

**12. ADMINISTRATION OF CONTRACTS**

FSMC staff shall implement procedures for the administration of all contracts of the Corporation. FSMC contract administration procedures must:

- A. Ensure funds are available to FSMC to cover the expected contract costs prior to FSMC entering into any contract.
- B. Ensure contractor's compliance with contract provisions.
- C. Ensure services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract.
- D. Ensure that all work is completed and accepted by FSMC before the contract expires.
- E. Assess and request amendments, renewals, or new contracts as required allowing sufficient time to process, and execute such changes before the contract expires to prevent a lapse in service.
- F. Ensure that contracts are amended subsequent to any grant agreement revisions that affects the contract terms.
- G. Review and approve invoices for payment in order to ensure that payments are made in accordance with contract terms, costs are budgeted and allowable, and work has been performed.
- H. For contracts funded by New York State or its agencies, authorities or related entities, ensure that invoices are reviewed, approved and submitted for payment in accordance with protocols approved by Empire State Development.
- I. Monitor contract expenditures to ensure that there are sufficient funds to pay for all services rendered as required by the contract.
- J. Verify all requirements of the contract are fulfilled before the final invoice is paid, in accordance with the terms of the contract, and the contract is closed.