

# NEW JERSEY PINELANDS COMMISSION PROCUREMENT POLICY

December 15, 2010

## I. PURPOSE

This document sets forth the New Jersey Pinelands Commission's (the "Commission") policy regarding the procurement of goods and services needed for the fulfillment of the Commission's mission.

## II. DEFINITIONS

*Procurement* is the procedure for obtaining goods or services, including all activities from the planning steps to execution of a purchase order or contract and payment for the goods or services received.

*Professional Services* means services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law or the performance of which services requires knowledge of an advanced type in a field of learning acquired by a prolonged formal course of specialized instruction and study, as distinguished from general academic instruction or apprenticeship or training. Professional services shall also include those services rendered in the provision of goods or performance of services that are original and creative in character in a recognized field of artistic endeavor. Professional services shall also include extraordinary unspecifiable services if, after evaluation and assessment, such services are determined to be such that they cannot reasonably be described by written specifications.

## III. GENERAL POLICY

It is the policy of the Commission that the procurement of goods and services be conducted in a manner that is fair, transparent, ethical and designed to ensure that contracts are awarded solely based upon merit and value. No goods or services shall be procured for the Commission except in accordance with this Policy. The Commission will not be bound by any procurement made contrary to this Policy.

Procurement of goods and services shall be based upon the operational needs of the Commission and such goods and services shall be procured in an efficient and timely manner, in the appropriate quantity and quality, and at a fair price. The Pinelands Commission will conduct the procurement of goods and services, including professional services, in accordance with applicable statutes, regulations and executive orders.

## IV. ADMINISTERING THE PROCUREMENT POLICY

The Executive Director shall be responsible for implementing the policies set forth herein. Administration of the procurement process shall be the responsibility of the

Business Manager. Said Manager shall develop and maintain procurement procedures, approved by the Executive Director, to ensure that this Policy is efficiently and effectively implemented by the Commission's staff. In discharging his/her responsibilities, the Executive Director may delegate implementation and approval authority to appropriate members of the staff.

## V. PRICE COMPETITION

It is the Commission's policy to competitively price procurements consistent with the most current State of New Jersey Department of the Treasury Delegated Purchasing Authority (DPA) Circular in each of the following categories:

- A. No price competition,
- B. Telephone quotations, internet pricing or quotations, e-mailed quotations or signed telefax quotations,
- C. Sealed written quotations, and
- D. Sealed written proposals in response to an advertised Request for Proposals or Quotes.
- E. No procurement shall be disaggregated so as to avoid competitive pricing requirements.

## VI. EXCEPTIONS

The price competition requirements of the Delegated Purchasing Authority (DPA) do not apply to the following:

- A. Procurement of goods and services through State Contracts, the State Distribution and Support Services Center, the Bureau of State Use Industries (DEPTCOR) or the Central non-profit agency CNA/ACCSES NJ (CNA).
- B. Procurement of goods and services from any federal or state government or any agency or political subdivision thereof.
- C. Procurement of goods and services where a demonstrable need exists that can be satisfied by only one source. In such cases, the specific need and the reasons why price competition is not possible or has not been successful shall be clearly documented and approved by the Business Manager and the Executive Director. Sole-source procurements shall be used only in exceptional circumstances.
- D. Where a firm has brought an innovative idea to the Commission, a Request for Proposals cannot be constructed without communicating the new idea and the procurement would not benefit from a competitive selection process. In such cases, the need for the procurement and its consistency with the criteria enumerated herein shall be documented and approved by the Business Manager and the Executive Director.

E. Expenses for travel and conferences.

F. Where State or federal statutory law requires a different process than that set forth herein.

G. In cases of unforeseen life, safety, or health emergencies where the public exigency requires that goods or services be purchased immediately. When it is possible to forecast a potential emergency, normal procurement practices can be followed. Any emergency procurement must be limited to purchasing those goods or services necessary to mitigate the emergency situation. Emergency procurements must be approved by the Business Manager, the Executive Director and the Commission Chair, or by their designees if they are unavailable, and shall be memorialized in writing.

## VII. APPROVAL LIMITS

A. Pursuant to the Commission's By-Laws, the Executive Director is authorized to procure goods and services in an amount not to exceed that which has been delegated to state agencies by the Director, Division of Purchase and Property, pursuant to N.J.S.A. 52:25-23.

B. The Commission shall approve all other procurements. In such cases, the Executive Director shall prepare a resolution of approval for the Commission's consideration. In the event of an emergency procurement, pursuant to Section VI.G., that exceeds the Executive Director's approval authority, a resolution memorializing the procurement shall be presented to the Commission for its approval at the earliest possible date.

## VIII. OTHER REQUIREMENTS AND PROCEDURES

### A. Procurement Specifications

1. All goods and services shall be described in a manner that enables bidders to clearly understand the goods or services to be procured. Any reference to a brand name must be followed by the language "or approved equal."

2. Scopes of Work shall be written for professional services. They must describe the services to be provided and, where possible, milestones and required products or outcomes. They shall not be drafted in such a way as to steer procurement to a particular firm or set of firms.

### B. Compliance with State and Federal Law and Executive Orders

Procurement practices shall comply with all applicable statutory requirements and Executive Orders. These include, but are not limited to: affirmative action; ethical standards; political contributions; equal opportunity for minority-owned, women-owned, and small business enterprises; source disclosure; New Jersey business registration; MacBride principles; and other contracting disclosure requirements.

### C. Advertised Requests for Proposals or Quotes

1. All advertised procurements are to be advertised in a way designed to ensure that a broad range of potentially interested, qualified firms receive appropriate notice of the proposed procurement and a fair opportunity to seek it. In addition to developing a potential bidders list, the procurement will be advertised in publications likely to reach qualified bidders, on the Commission's web site and on the State's Office of Information Technology web site once it is operational.
2. A description of the procurement as well as any project specifications and related information shall be made available in writing to all interested parties.

### D. Pre-Bid Conferences

Pre-bid conferences may be held with interested parties to explain project specifications, to explain the factors on the basis of which the contract will be awarded, and/or to answer any questions. The location, time, and other information concerning the pre-bid conference shall be set forth in the Request for Proposals or Quotes or otherwise appropriately advertised prior to the due date for responses.

### E. Bids

1. All proposals, bids, or other responses to an advertised procurement shall be submitted in written form and shall be sealed until opened with all other bids.
2. Separate technical and cost proposals may be required as part of a professional services procurement. In such cases, the cost proposals shall not be opened and evaluated until the technical proposals have been evaluated.
3. Bids shall be automatically rejected if they are non-responsive to mandatory bid requirements.
4. Negotiation of a Best and Final Offer shall not occur unless the right to do so has been reserved in the bid documents.
5. If a bidder discovers an error after submitting its bid but prior to bid opening, the bidder may withdraw the bid and may submit a revised bid as long as it is received prior to the date and time of bid opening. No alterations or corrections shall be allowed after bid opening. If an error is discovered after the bid opening but before award, the bidder may request withdrawal of the bid in writing. The decision to permit withdrawal will be at the discretion of the Executive Director.

### F. Awards

1. No procurement award shall be made unless funds are available to finance the costs.

2. Absent exceptional circumstances, the procurement of goods and non-professional services shall be awarded to the lowest responsible bidder that submits a responsive bid. Where a procurement is proposed to be awarded to someone other than the low bidder, the exceptional circumstances justifying such a decision shall be documented and incorporated into any resolution presented to the Commission for its consideration.

3. Procurement of professional services or technical services may be based on multiple factors as opposed to simply on the basis of cost. In such cases, the Request for Proposals shall set forth the scoring factors and scoring procedures to be used. The scoring system may not be designed to improperly steer a contract or contracts to a particular firm or set of firms.

Factors that may be used as a part of this scoring process include but are not limited to the following:

- The background, qualifications, skills, and experience of the firm and its staff;
- The firm's degree of expertise concerning the area at issue;
- The rate or price to be charged by the firm;
- The Commission's prior experiences with the firm;
- The firm's familiarity with the work, requirements, and systems of the Commission;
- The firm's proposed approach to the issues raised in the project description or specifications;
- The firm's capacity to meet the requirements of the project at issue;
- The firm's references;
- Interviews with prospective firms; and
- Geographical location of the firm's offices.

4. Any bidder convinced that there are justifiable grounds to dispute an award may do so in writing upon written notification that the bid has not been accepted or that an award is being made to another bidder. The Executive Director shall review the protest and make a determination on those procurements which s/he is authorized to approve. For other procurements, the Executive Director shall submit a recommendation to the Commission who shall make the final determination.

#### G. Evaluation Committee for Professional Services

1. An evaluation committee shall be formed to review proposals involving a professional services or technical services procurement that is to be awarded based upon factors in addition to cost. The members of the committee shall be qualified to conduct the review and shall be screened by the Commission's Ethics Liaison Officer for conflicts of interest and for the appearance of such a conflict.

2. The evaluation committee shall prepare a report of its review and document the reasons for its procurement recommendation. Said report shall also be incorporated into any proposed resolution to be considered by the Commission.

#### H. Open Ended Professional Service Contracts

All professional and technical services contracts shall have completion or expiration dates. Therefore, open ended or ongoing contracts for such services shall not be permitted.

#### I. Conflicts of Interest

Neither Commission members nor Commission staff shall participate, either directly or indirectly, in the procurement process where such a member of the Commission or staff has a conflict of interest or there is an appearance of such a conflict.

#### J. Records

The Business Manager shall maintain appropriate documentation and records of all procurements in accordance with the Commission's approved records retention plan.

### IX. EFFECTIVE DATE AND REVISIONS

This policy shall become effective upon the Commission's approval and review by the Governor pursuant to the Pinelands Protection Act. It shall supersede the Pinelands Commission Purchasing Policy, dated March 28, 2007.

The Executive Director shall periodically review and recommend changes to this policy as necessary to maintain consistency with relevant Executive Orders and New Jersey State Law.