

# **ROSWELL PARK CANCER INSTITUTE CORPORATION**

## **PROCUREMENT CONTRACT GUIDELINES**

### **I. STATEMENT OF PURPOSE**

These Guidelines are adopted pursuant to the provisions of the Roswell Park Cancer Institute Corporation Act (the "Act") and Section 2879 of the Public Authorities Law, as amended, and shall be subject to annual review and approval by the Board of Directors of Roswell Park Cancer Institute Corporation ("RPCI"). The Guidelines shall apply with respect to any contract for goods or services having aggregate consideration of twenty-five thousand dollars (\$25,000.00) or more except as otherwise stated herein.

### **II. DEFINITION OF TERMS**

Definitions. The following terms shall, for purposes of these Guidelines, have the following meanings unless the context shall clearly indicate some other meaning:

"RPCI" shall mean Roswell Park Cancer Institute Corporation.

"Counsel" shall mean the General Counsel of RPCI, or his designee.

"Foreign Business Enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation, which offers for sale, lease or other form of exchange, goods sought by RPCI and which are substantially produced outside New York State, or services sought by RPCI and which are substantially performed outside New York State.

"Non-Personal Services Contracts" shall mean any written agreement entered into by RPCI for the acquisition of goods, materials or non-personal services, including construction contracts.

"Minority Business Enterprise" shall mean any business enterprise, including a sole proprietorship, partnership, limited liability company or corporation certified under Article 15-A of NY Executive Law that is:

- a. at least fifty-one percent (51%) owned by individuals who are African-Americans, Hispanics, Asians, Pacific Islanders or Native Americans;
- b. an enterprise in which the minority ownership is real, substantial and continuing;
- c. an enterprise in which the minority ownership has, and exercises, the authority to independently control day-to-day business decisions; and

- d. authorized to do business in New York State, independently owned and operated, not dominant in its field, and certified or in the process of obtaining certification as a Minority-Owned Business Enterprise in New York State.

“New York State Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation, which offers for sale or lease or other form of exchange, goods which are sought by RPCI and which are substantially manufactured, produced or assembled in New York State, or services which are sought by RPCI and which are substantially performed within New York State.

“New York Resident” shall mean a natural person who maintains his or her permanent and principal home, within New York State and to which such person, whenever temporarily located away from such home, always intends to return.

“Officer” shall mean any of the following: the President/CEO; Associate Director, Chief Institute Operations Officer, Chief Clinical Operations Officer, Chief Financial Officer, or the Secretary of RPCI.

“Personal Services” shall mean any services performed for a fee, commission or other compensation by persons or organizations who are not providing such services as officers or employees of RPCI. Personal services include, but are not limited to, legal, accounting, management consulting, investment banking, statistical, research, public relations, architecture, engineering, surveying or any other services of a consulting, technical or professional nature.

“Preferred Source” means providers selected in accordance with State Finance Law §162, offering specific commodities or services that meet the “form, function and utility” requirements of RPCI.

“Procurement contract” means any written or non-written agreement to which RPCI is a party, for the acquisition of goods or services of any kind and with respect to which, the actual contract price or the estimated dollar amount to be expended during the contract term, equals or exceeds twenty-five thousand dollars (\$25,000.00).

“Procurement contractor” means any individual who or organization which enters into a Procurement contract with RPCI.

“Women-Owned Business Enterprise” shall mean any business enterprise, including a sole proprietorship, partnership, limited liability company or corporation certified under Article 15-A of NY Executive Law that is:

- a. at least fifty-one (51%) percent owned by one or more women, who are United States citizens or permanent resident aliens;
- b. an enterprise in which the women ownership is real, substantial and continuing;
- c. an enterprise in which the women ownership has, and exercises, the authority to control independently day-to-day business decisions; and

d. authorized to do business in New York State, independently owned and operated, not dominant in its field, and certified or in the process of obtaining certification as a Women-Owned Business Enterprise in New York State.

### **III. USE AND SELECTION OF PROCUREMENT CONTRACTORS**

A. Use of Procurement Contractors. In the interest of conserving and making the most efficient use of RPCI resources and personnel, it is the policy of the Board of Directors that (i) RPCI activities be performed by RPCI employees when they are capable of doing so in an efficient and proper manner, and (ii) when outside services or goods are utilized, contractors be selected from as broad a spectrum of providers as is practical, (iii) contracts shall be awarded in a manner consistent with obtaining high quality service, goods and materials at fair and reasonable prices, and (iv) prior to making an award of a Procurement contract, RPCI will ensure that RPCI has received an Offerer/bidder or contractor a Disclosure of Prior Finding(s) of Non-responsibility substantially consistent with Appendix B hereof and make a final determination of responsibility of the proposed Offerer/bidder or contractor.

Personal services contractors shall be used only when it has been determined by RPCI that: (i) such service is necessary or convenient to the performance of RPCI responsibilities, and (ii) (a) such service is not available from an Officer or RPCI employee, (b) the nature of such service necessitates it be undertaken by someone independent of RPCI, or (c) use of RPCI personnel for such service would not be cost effective. Non-personal services contracts shall be entered into when RPCI requires such goods, materials and non-personal services in order for the hospital and research facility to function effectively and efficiently.

#### **B. Selection and Approval of Procurement Contractors.**

1. **Source Selection Methods.** RPCI shall award Procurement Contracts, in accordance with the following selection methods:

a. Purchase below discretionary threshold. Purchases below the discretionary threshold may be made outside of the process described below. The general discretionary threshold is up to twenty-five thousand dollars (\$25,000.00). Where the source is a Minority or Women-Owned Business Enterprise, the discretionary threshold is up to two hundred thousand dollars (\$200,000.00).

b. Preferred Source. Goods or materials may be obtained from any provider who has been afforded Preferred Source status under the law, such as the Department of Correctional Services Industries Program and qualified charitable agencies for the blind.

c. Volume Contracts. Goods or materials may be obtained through contracts and facilities of the New York State Office of General Services or the United States General Services Administration, or any group or centralized purchasing contracts or facilities of health care organizations, networks, cooperatives, educational institutions or

local governmental entities whose procurement of said contracts or facilities complies with applicable procurement laws, regulations and guidelines.

d. Competitive Procurement.

(i) Invitation for Bid (IFB). Solicitation of price bids for specified services, or goods, materials or non-personal services, to be awarded to qualifying contractors based upon specified competitive criteria, with primary emphasis placed upon the lowest responsible bid price. For purposes hereof, the lowest responsible bidder is a bidder who has the lowest price among the bids submitted by all bidders who are financially able and competent to fully perform the contract. Competitive bids are to be solicited when the services or goods, materials or non-personal services required are of a standardized nature that may reasonably be made the subject of specifications to which bidders respond with required qualification data and price offers or when required by law.

(ii) Requests for Proposals (RFP). Solicitation of project-specific proposals which address identified financial, organizational, logistical and technical requirements and/or problems and which detail elements of performance including techniques and procedures, areas of specialized skill, experience and/or knowledge, as well as price. Such requests may be made when the subject matter of the contract is of a specialized or technical nature, or where there is a limited number of contractors in the field or area of expertise available to RPCI. RPCI may limit the field of contractors receiving an RFP, provided that the number solicited shall be sufficient to elicit quality and price competitive proposals. Contracts are awarded on the basis of a formal evaluation of the qualifications of the RFP respondents and the characteristics, quality and cost of the proposal in accordance to RFP Policy # 503.1. Competitive negotiations with one or more of the respondents (following a more general RFP) are permissible.

e. Sole Source. Sole source procurement is used if there is only one source for the product or service, and this is established by data from sources other than the vendor. When RPCI management determines, and, where the expenditure involved equals or exceeds two hundred fifty thousand dollars (\$250,000.00), the Board of Directors approves by resolution, that there is one source for a required service, good or material that has a unique advantage with respect to the provision of such service or material which would render competitive procedures impractical, or otherwise not in RPCI's best interest, the contract for that service, good or material may be awarded without competitive procedures. Approval for a sole source purchase shall require evidence from the department promoting such purchase demonstrating the unique advantage to RPCI. Sole source procurements must be documented using the RPCI Procurement Exemption Questionnaire, including fair market value assessment. The Vice President/Department Chair must attest to and sign the Questionnaire and the request must be approved by the General Counsel.

f. Single Source. One source that has a unique advantage rendering competitive process impractical or otherwise not in RPCI's best interest. Single source procurements must be documented using the RPCI Procurement Exemption Questionnaire, including fair market value assessment, the alternatives considered and the

rationale for selection. The Vice President/Department Chair must attest to and sign the Questionnaire and the request must be approved by the General Counsel.

g. **Exigency.** In the case of a set of exigent circumstances or an emergency arising out of an accident, strike, materials shortage, or other unforeseen occurrence or condition whereby circumstances affecting property of RPCI or life, health or safety of employees or patients require immediate action, the President/CEO, or other Officer designee may award a contract without competitive procedures. Within a reasonable period of time thereafter the President/CEO shall provide written notice of any contract awarded under the aforementioned circumstances. A record setting forth the circumstances under which such contract was let shall be maintained for a period of at least ninety days following the date of approval of the next annual report of Procurement contracts.

h. **Assignment.** RPCI may acquire contracts through assignment from affiliates or subsidiaries. The assignor shall certify that such contracts were awarded pursuant to applicable procurement laws, regulations and guidelines.

**2. Advertisement Requirements for Competitive Source Selection Methods.** Advertisement requirements apply only when competitive source selection methods are used (see §B.1(d), above). No other source selection method is advertised.

a. The solicitation of bids, proposals or submissions of qualification data or offers for procurement contracts shall be made by RPCI in a manner determined by the President/CEO or designee, to be the most cost-effective for providing reasonable competition for RPCI's contracts. This shall include advertisement in appropriate newspapers or trade journals for procurement contracts requiring a competitive bid, and may also include direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these guidelines, including the minority and women-owned business provisions herein. In addition, in the case of procurement contracts in the actual or estimated amount of twenty-five thousand dollars (\$25,000.00) or more, RPCI will advertise all such opportunities in the "Procurement Opportunities Newsletter" published by the New York State Department of Economic Development.

b. Contract opportunities being re-bid or re-solicited within sixty business days after proposals were originally due pursuant to publication in the Newsletter are exempt from further publication.

c. Any solicitation for bids, proposals or submissions of qualification data or offers for RPCI's acquisition of goods or services of any kind and with respect to which, the actual contract price or the estimated dollar amount to be expended during the contract term, equals or exceeds fifteen thousand dollars (\$15,000.00) shall contain a written designation of one or more RPCI staff member(s) who may be contacted as designated staff to ensure compliance with NYS Finance Law sections 139-j and 139-k as well as the notice language and certification included in Appendix A. RPCI's designated staff member(s) shall seek written affirmations consistent with the affirmation within Appendix A from all Offerers. Any RPCI employee who becomes aware of any communication by an Offerer/bidder to RPCI other than to designated staff pertaining to any such solicitation for

bids, proposals or submissions of qualification data or offers during the procurement process shall immediately notify the Office of General Counsel so appropriate actions may be taken.

### **3. Special Requirements Regarding the Selection of Personal Service Contractors.**

Personal Services. RPCI shall endeavor to secure proposals from service contractors on a competitive basis and to select from such proposals the service contractor offering the most favorable terms, weighing appropriate factors including expected ability to perform against projected cost. In its attempt to secure contracts for services upon the most favorable terms, RPCI shall, unless otherwise provided in these Guidelines:

- i. solicit proposals from several firms known to be qualified in the area of the service to be provided by providing written solicitations for bids, proposals or submissions of qualification data or offers for Procurement contracts;
- ii. encourage participation from Minority- and Women-Owned Business Enterprises in such contracts;
- iii. evaluate those offers received on the basis of the service contractor's technical qualifications, financial stability, past performance for RPCI, references, staff availability, experience, possible conflicts of interest and contract price or fee structure. Contract price and fee may be the subject of competitive negotiation; and,
- iv. document the deliberative processes by which service contractors are selected.

### **4 . Board Approvals.**

a. Finance Committee Approval shall be required to be obtained in advance with respect to: (i) capital projects involving procurements in excess of five hundred thousand dollars (\$500,000) , and (ii) any project, program or action that involves expenditure of operating funds in excess of one million dollars (\$1,000,000);

b. Board of Directors approval shall be required to be obtained in advance with respect to any project, program or action that involves expenditure of capital or operating funds, or any combination thereof, in excess of two million dollars (\$2,000,000); and,

c. Procurements of inventory, medical or surgical supplies, pharmaceuticals and general commodities, sold to or used in the care of patients, and which are purchased through New York State contract or other authorized group purchasing organizations as contemplated in these Procurement Guidelines, shall not require approval from the Board of Directors or the Finance Committee, provided such procurements are budgeted in the approved budget for the fiscal year of the procurement.

**5. Requirement that contracts be in writing.** All Procurement contracts shall be in writing and approved and executed by an authorized officer, or as provided in the RPCI By-laws or an applicable resolution of the Board of Directors.

**6. The form of all contracts shall be approved by Counsel.**

**C. Promotion of Minority and Women-Owned Business Enterprises.** It is a goal of RPCI to (a) promote and assist participation by Minority and Women-Owned Business Enterprises in competition for Procurement contracts and (b) award Procurement contracts to Minority and Women-Owned Business Enterprises in accordance with the current RPCI Master Goal Plan submitted in accordance with Executive Law §15-A.

**D. Contract Provisions.** Contracts for personal services shall detail the scope of services to be performed and where applicable the agreed schedule for performance, the procedure for monitoring of that performance by RPCI personnel and, where appropriate, any permitted use of RPCI supplies, facilities or personnel. Such contracts shall also state the compensation for the services, the schedule of payment, the billing process and other pre-conditions for receiving payment from RPCI, procedures for termination of the contract and any other provisions Counsel deems necessary or appropriate for each particular contract. In addition, if performance of a particular personal services contract will require the use of subcontractors, the contract shall require the contractor to act affirmatively to secure appropriate participation by Minority and Women-Owned Business Enterprises.

**E. Limitations on Contracts with Former RPCI Officers and Employees.** A former officer or employee shall not be permitted, for a period of two years following termination of RPCI employment, to enter into a personal services contract with RPCI, either as an individual or as an officer or employee of a private business entity, in relation to any matter over which he or she exercised decision-making power during the performance of official duties or that may create the appearance of impropriety or conflict of interest; provided, however, that this limitation may be waived where the President/CEO, with approval of the State Ethics Commission, determines that (1) such former officer or employee has no interest other than their compensation in the outcome of the particular contract and (2) such person's fulfillment of the contract is a benefit to RPCI; or when the Attorney General grants an exemption pursuant to the Public Officers Law.

**F. Promotion of New York State Business Enterprises and New York State Residents.** It is a goal of RPCI to promote the participation of New York State Business Enterprises and New York State Residents in Procurement contracts. Accordingly, the following procedure shall apply:

1. RPCI shall consult the specifications of New York State Business Enterprises in developing specifications for any Procurement contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding. RPCI shall, where feasible, make use of the stock item specification forms prepared by the New York State Commission of General Services, and where necessary, consult with said Commissioner in developing such specifications and making such determinations.

2. RPCI shall, with the cooperation of the New York State Department of Economic Development and through cooperative efforts with contractors, provide for the notification of New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Procurement contracts let by RPCI in the amount estimated to be equal to or greater than one million dollars (\$1,000,000), by cooperating with New York State in efforts to obtain offset credits from foreign countries and promulgating procedures which will assure compliance by contractors with such notification as a condition of awarding bids. Such contractors shall, as supplementary materials to their bids, document their efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on Procurement contracts equal to or greater than one million dollars (\$1,000,000); attest to compliance with the federal Equal Employment Opportunity Act of 1972 (P.L. 92-261) as amended; and document their efforts to provide notification to New York State Residents of employment opportunities through listing such positions with the Community Service Division of the New York State Department of Labor or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

3. RPCI shall include in all bid documents provided to potential bidders a statement that information concerning the availability of New York State subcontractors and suppliers is available from the New York State Department of Economic Development, and it is the policy of New York State to encourage the use of New York State subcontractors and suppliers, and to promote the participation of Minority and Women Owned Business Enterprises where possible, in the procurement of goods and services.

4. RPCI, with the cooperation of the Community Service Division of the New York State Department of Labor and through cooperative effort with contractors, shall provide for the notification of New York State Residents of employment opportunities arising in New York State as a result of any Procurement contract let by RPCI in an amount estimated to be equal to or greater than one million dollars (\$1,000,000), and shall require contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community service division, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

5. RPCI shall notify the New York State Commissioner of Economics Development of the award of a Procurement contract for the purchase of goods from a Foreign Business Enterprise in an amount equal to or greater than one million dollars (\$1,000,000) simultaneously with notifying the successful bidder therefore. RPCI shall not thereafter enter into a Procurement contract for said goods until at least fifteen (15) days has elapsed, except for Procurement contracts awarded on an emergency or critical basis. The notification to the Commissioner of Economic Development shall include the name, address and telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of the same who is principally responsible for the proposed Procurement contract.

#### **IV. REPORT ON PROCUREMENT CONTRACTS**

A. Annual Report. During the first three (3) months of each fiscal year, RPCI shall report on Procurement contracts awarded during the previous fiscal year using the reporting requirements for the Annual Report of State Authority Contracts, ("Report of Contracts") and shall provide a copy of such report to the Board of Directors at or before the Board's Annual Meeting. To the extent appropriate, the Board of Directors may incorporate the Report of Contracts in any annual report it prepares for submission to New York State departments, divisions or agencies.

B. Submissions. The annual report on Procurement contracts shall be submitted to the Division of the Budget with copies to the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee and the Assembly Ways and Means Committee, and the Department of Health.

C. Public Copies. Copies of the annual report on procurement contracts shall also be available to the public upon reasonable request at RPCI's main office.

#### **V. DUE DILIGENCE**

A. Before any contract award for goods or services of greater than one hundred thousand dollars (\$100,000.00) is made, certain due diligence steps will be taken in accordance with RPCI Policy #501.1.

B. Prior to making an award of a Procurement contract, RPCI will ensure that RPCI has received from Offerer/bidder or contractor a Disclosure of Prior Finding(s) of Non-responsibility substantially consistent with Appendix B, and make a final determination of responsibility of the proposed Offerer/bidder or contractor.

## Appendix A

### **RFP or Bid Document Notice Language**

“Pursuant to State Finance Law sections 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between Roswell Park Cancer Institute Corporation and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit a “Request for Proposal” through the final award and approval of the Procurement contract by RPCI (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law section 139-j(3)(a). Designated staff, as of the date hereof, is identified in this solicitation.”

### **Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law sections 139-j(3) and 139-j(6)(b)**

#### **Background:**

State Finance Law sections 139-j(6)(b) provides that:

Every Government Entity shall seek written affirmations from all Offerers as to the Offerers understanding of and agreement to comply with the Government Entity’s procedures relating to permissible contacts during a Government Procurement pursuant to subdivision three of this section.

#### **Instructions:**

Roswell Park Cancer Institute Corporation must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a Procurement contract in accordance with State Finance Law sections 139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Contractor submits its proposal or bid.

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### **Affirmation of Understanding and Agreement**

Offerer affirms that it understands and agrees to comply with the procedures of Roswell Park Cancer Institute Corporation relative to permissible Contacts as required by State Finance Law sections 139-j(3) and 139-j(6)(b).

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor: \_\_\_\_\_

Contractor Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Appendix B

### Offerers Disclosure of Prior Finding(s) of Non-Responsibility pursuant to State Finance Law section 139-j(10)(b).

#### **Notice:**

"Pursuant to State Finance Law sections 139-j and 139-k, RPCI employees are required to obtain certain information and make a determination of the responsibility of the Offerer/bidder pursuant to these statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period the Offerer/bidder is debarred from obtaining government Procurement contracts. Further, Offerer/bidder will be required to provide RPCI along with any Offer/bid a disclosure of prior findings of non-responsibility by any government entity pursuant to State Finance Law sections 139-j(3) within the past four years."

#### **Background:**

State Finance Law sections 139-j(10)(b) provides that:

Every Government Entity shall ensure that its solicitations of proposals for Procurement contracts require offerers to disclose findings of non-responsibility due to violations of the provisions of subdivision three of this section within the previous four years by any governmental entity.

#### Instructions:

Roswell Park Cancer Institute Corporation must obtain the required Disclosure of Prior Finding(s) of Non-Responsibility to comply with New York State Finance Law sections 139-j and 139-k. It is recommended that this affirmation be obtained as early as possibly in the procurement process, such as when the Contractor submits its proposal or bid.

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### Disclosure of Prior Finding(s) of Non-Responsibility

Solicitation/Contract Identifier Number: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Person Submitting this Form: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

1. Has any<sup>7</sup> Government Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement contract in the previous four years?  
(Please circle) Yes      No      (If yes, please answer the following questions).

2. Was the basis for the finding of non-responsibility due to a violation of New York State Finance Law section 139-j?  
(Please circle) Yes      No

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Government Entity?  
(Please circle) Yes      No

4. If you answered "Yes" to any of the above questions, please provide details regarding the finding of non-responsibility below:

Government Entity: \_\_\_\_\_

Date of Termination or Withholding: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Has any Government Entity or other government agency terminated or withheld a Procurement contract with the above-named entity or individual due to the intentional provision or false or incomplete information?

(Please circle) Yes      No

6. If Yes, please provide details below:

Government Entity: \_\_\_\_\_

Date of Termination or Withholding: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary).

Offerer certifies that all information provided to RPCI with respect to New York State Finance Law sections 139-j and 139-k is complete, true and accurate.

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_