

Acquisition

The Federal Reserve Bank of New York Acquisition Policy (the “**Policy**”) is based on the Model Acquisition Guidelines for Federal Reserve Banks approved by the Conference of First Vice Presidents in June 2013. The Policy is intended to govern 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.

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.

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1. Applicability & Scope

- 1.1 Scope. Except for the exclusions 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.
- 1.2 Exclusions. The Policy does not apply to:
- (a) acquisitions of real property or any interest in real property;
 - (b) 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**”);

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- (c) purchases, sales, or other transactions made by the Bank either with or on behalf of foreign governments, central banks, or international organizations (“**CBIAS Transactions**”);
- (d) selection of counterparties for Policy Operations or CBIAS Transactions; or
- (e) 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 4.2). The Policy also contemplates the use of other procedures when a small purchase is involved (section 4.3), and it allows for exceptions to competition when special circumstances exist (section 4.4).
- (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 as well as 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 a 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 United States 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 (“**GSE**”), the Bank will follow the Policy unless the United States government or the GSE instructs it not to do so. If the United States government or a GSE 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 5.1.3) 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) Selection of individual non-employee contingent workers is subject to procedures administered by the Human Resources Group under the Bank’s *Human Resources 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 as a contingent worker.
- (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*.

2. Roles & Responsibilities

2.1 General

Each business area is responsible for its procurement decisions. Business areas are supported through the acquisition process by the Procurement Function, Legal-FSTC, and other Bank functions that are responsible for certain procedural requirements to complete an Acquisition consistent with the Policy.

2.2 Business Area

2.2.1 Contract Representative. For each Acquisition, the business area undertaking the Acquisition must identify the individual who will have the role of the Contract Representative and be accountable for the 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 accountable throughout the acquisition process to make decisions on behalf of the business area. Therefore, the Contract Representative must be informed and consult relevant Bank stakeholders, as appropriate, so that the Contract Representative is able to exercise business judgment on behalf of the Bank. The Contract Representative is responsible for staying informed about due diligence activities, results, and their implications for the Acquisition and for communicating information about the Acquisition with individuals in the Bank who will have a role in the Acquisition.

2.2.2 Responsibilities - Acquisitions not assisted by the Procurement Function. The Policy permits business areas to manage Acquisitions with an anticipated value of \$100,000 or less and data Acquisitions (regardless of the anticipated dollar value) without involving the Procurement Function. When a business area undertakes an Acquisition without assistance from the Procurement Function, the Contract Representative is responsible for compliance with all provisions of the Policy as they relate to the planned Acquisition, including any requirements that would otherwise be performed by the Procurement Function in a Procurement-Assisted Acquisition. (See section 2.3.)

2.2.3 Responsibilities – Procurement-Assisted Acquisitions. For a Procurement-Assisted Acquisition, the Contract Representative is responsible for:

- (a) Making the decision to acquire Goods, Services, or Construction and to initiate the acquisition process;
- (b) Defining a clear scope and the business and technical requirements for the Goods, Services, or Construction to be acquired;
- (c) Approving the RFP 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;
- (d) Securing any approvals required for the Acquisition, for example budget approvals;
- (e) Participating in the evaluation of proposals, including offeror presentations, and reviewing the results of due diligence activities, including, for example, VIP, credit

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review, conflicts of interest review, and information security assessment, to determine whether or not offerors are responsible;

(f) Selecting the vendor;

(g) Working with the Procurement Function to finalize business terms and with Legal-FSTC to negotiate a Contract with the selected vendor;

(h) Approving and signing contract documents with the selected vendor (or obtaining the signature of a business area officer with appropriate signing authority).

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 Group for information technology projects or the Corporate Group 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. Even if responsibility is delegated, the Contract Representative remains accountable for the Acquisition.
- (2) If an Acquisition is for the benefit of multiple business areas, the affected business areas must coordinate amongst 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 the Procurement Function.

2.3 Procurement Function

2.3.1 **General.** The Procurement Function serves as a resource when requested by business areas to answer questions about the Policy and the acquisition process and to consult about when special circumstances may warrant an exception to competitive process.

2.3.2 **Procurement-Assisted Acquisitions.** For Procurement-Assisted Acquisitions, the Procurement Function facilitates 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. The specific responsibilities of the Procurement Function for Procurement-Assisted Acquisitions include:

- (a) Working with the Contract Representative and other individuals identified by the Contract Representative, developing vendor requirements that reflect the business and technical needs, specifications for the Goods, Services, or Construction to be acquired, and evaluation criteria for solicitation responses;
- (b) Assisting business areas coordinate with other Bank functions and Federal Reserve System stakeholders that are to receive notice, provide input, conduct due diligence activities, review, or approve the planned Acquisition;

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- (c) Identifying prospective offerors in consultation with the business area;
- (d) Preparing RFIs and RFPs for review by the business area and, if applicable, Legal-FSTC, and facilitating the RFI and RFP processes, including offeror presentations and evaluation of responses;
- (e) Generally, acting as the primary point of contact for offerors during the acquisition process and coordinating any negotiations and other contacts with offerors;
- (f) Negotiating business terms with offerors and coordinating with Legal-FSTC to reflect agreed business terms in a Contract;
- (g) Coordinating signature of contract documents;
- (h) Maintaining the Acquisition File; and
- (i) Sending original contract documents to the Bank's Legal Records as required by applicable Bank policy.

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

2.4.1 General. Legal-FSTC provides legal support and counsel to business areas and the Procurement Function throughout the acquisition process. Legal-FSTC coordinates with the Procurement Function to share information relevant to acquisitions. All Contracts for the purchase of Goods, Services, and Construction are to be drafted or reviewed by Legal-FSTC as described in the Bank's *Policy on Legal Matters, Including Procedures for Contract Review*.

2.4.2 Responsibilities. With respect to any particular Acquisition, Legal-FSTC is responsible for:

- (a) Consulting upon request with the Contract Representative and the Procurement Function, for Procurement-Assisted Acquisitions, about the RFP and exceptions to competitive procedures to identify and address legal issues;
- (b) Developing contract terms and agreement templates and providing appropriate templates to the Contract Representative or the Procurement Function, for Procurement-Assisted Acquisitions, to be included in RFPs;
- (c) Reviewing offeror proposals as they relate to any exceptions or proposed modifications to Bank legal requirements or contract terms; and
- (d) Finalizing the Contract with the selected offeror, including negotiating with the selected offeror, incorporating business terms negotiated by the Procurement Function and the Contract Representative, assisting the Procurement Function and the Contract Representative, as requested, with negotiation of business terms.

2.5 Due Diligence: Credit Review

2.5.1 "Vendor." As used in this section, "Vendor" includes an offeror the Bank intends to select as a vendor.

2.5.2 Purpose. The purpose of a vendor credit review is to educate the business area about the credit risk profile of the Vendor. The scope of review is to measure the risk of

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the Vendor becoming insolvent during the term of the Bank's Contract. Financial Risk Oversight does not approve or reject Vendors, but instead advises the Contract Representative about the Vendor's credit risk profile. Therefore, when a credit review is required under the thresholds described below and the Vendor provides the information necessary for Financial Risk Oversight to complete a credit review, Financial Risk Oversight will undertake the credit review (or provide the current credit review if one exists). The Contract Representative must consider the results of the credit review and is responsible for accepting and managing the risk associated with the Vendor's credit posture.

2.5.3 Thresholds. Subject to section 2.5.5., a current credit review is required before a Contract is signed with a Vendor in the following circumstances:

- (a) For a Vendor that provides Goods, Services, or Construction determined to be critical to core Bank operations (*i.e.*, an entity that would be defined as a "Critically Important Vendor," or "CIV," in the Bank's Vendor Management Policy), a current credit review must be in place at the time the Contract with the Vendor is signed by the Bank and while the Vendor continues to be a CIV; and
- (b) For a Vendor that is not a CIV but to which the sum of amounts payable by the Bank under the Contract at any point in time as (A) advances (prepayments) for Goods, Services, or Construction before they are received by the Bank, and (B) if applicable, termination payments arising in connection with Contract termination related to the Vendor's insolvency or the Vendor's breach or termination for convenience (but not termination payments related to the Bank's breach or termination for convenience) exceeds \$500,000.

2.5.4 Current Credit Review. A credit review is considered "current" for a period of one year after its date of issuance by Financial Risk Oversight. If there is not a current credit review in place when a credit review is required, the Contract Representative or the Procurement Function, for a Procurement-Assisted Acquisition, must request a credit review to be conducted by Financial Risk Oversight. A credit review of a Vendor conducted for one Acquisition may be used for subsequent Acquisitions from the same Vendor during the period the credit review is current.

2.5.5 Exception. If the Contract Representative determines that the Bank should proceed with an Acquisition from a Vendor not reviewed by Financial Risk Oversight when a credit review is required under section 2.5.3, the Contract Representative must obtain written approval from the applicable business area's senior management (Senior Vice President or higher). For example, an exception may be necessary to proceed because the Vendor does not provide financial information necessary for Financial Risk Oversight to conduct a credit review.

Commentary

- (1) To the extent a Vendor's financial statements are publicly available (*e.g.*, as part of 10K or 10Q filings with the U.S. Securities and Exchange Commission), Financial Risk Oversight will be able to use the publicly-available financial statements to conduct its credit review. For any Vendor not required to make its financial statements publicly available (*e.g.*, private companies), the Contract Representative or the Procurement Function, for a Procurement-Assisted Acquisition, will have to request the financial statements from the Vendor. Contracts with Vendors should generally include a requirement that the Vendor provide financial statements for post-contract credit reviews as may be required by this section.

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- (2) Where Contracts with existing Vendors do not require the Vendor to provide financial statements, the 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 renewal Contract should generally include a requirement that the Vendor provide financial statements for post-contract credit reviews as may be required by this section.

2.6 Due Diligence: Conflicts of Interest

2.6.1 Obligation to Avoid Conflicts. Every Bank employee and contingent worker has an obligation to avoid situations that might give rise to an actual conflict of interest or the appearance of a conflict of interest. An employee or contingent worker who represents the Bank in dealing with the public, such as a Contract Representative, must be particularly careful in this regard. Also, each Bank employee and contingent worker who participates personally and substantially in an acquisition of Goods, Services, or Construction with an anticipated value of \$100,000 or more must comply with the training and certification requirements described in section 2.6.5 of the Policy.

2.6.2 Code of Conduct. 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. If an employee or contingent worker is unsure whether or not a particular situation would give rise to an actual or apparent conflict of interest, he or she should consult with the Bank's Ethics Office before participating in the matter.

2.6.3 Federal Law. In addition to the Bank's conflict of interest rules, 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.

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.

2.6.4 Participation. Personal and substantial participation in an Acquisition includes, but is not limited to:

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- (a) contributing to, reviewing, or approving any business requirements, solicitation documents, RFIs, or potential vendor lists;
- (b) participating in any evaluation of offerors, offeror presentations, or proofs of concept, trials, or evaluations of Goods, Services, or Construction;
- (c) 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 4.4;
- (d) performing 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;
- (e) serving as a manager consulted on acquisition procedures, strategies, or decisions; and
- (f) negotiating, drafting, reviewing, or signing Contracts to acquire Goods, Services, or Construction.

2.6.5 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:

- (a) complete annual conflicts of interest training;
- (b) certify that he or she (i) does not have a conflict of interest with any offeror; and (ii) understands the Gifts, Meals and Entertainment Rule in the Bank's Code of Conduct; and
- (c) complete any other Acquisition-related training required by the Ethics Office.

Commentary

(1) The annual conflict of interest training is required for all Bank officers and certain Bank employees whether or not they participate in Acquisitions. Section 2.6.5 extends the conflict of interest training requirement.

2.6.6 Institutional Conflicts of Interest. The Contract Representative must consider the Bank's Institutional Conflict of Interest Policy as it relates to the acquisition process. The Contract Representative or the Procurement Function, for a Procurement-Assisted Acquisition, 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 steps, if any, 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).

2.7 **Due Diligence: Vendor Integrity Program**

2.7.1 General. The Vendor Integrity Program ("VIP") administered by the Compliance Function screens offerors and Bank vendors to help business areas determine if these entities are Responsible and do not pose an unacceptable physical, legal, or

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reputational risk to the Bank. For more information about the VIP, refer to the FAQ document accessible through the Bank's intranet.

2.7.2 Scope.

- (a) All offerors to which the Bank anticipates making an award and all existing Bank vendors are required to participate in the VIP. (United States government entities, agencies, or instrumentalities, and other Federal Reserve Banks supplying Goods, Services, or Construction to the Bank are not considered vendors for purposes of the VIP.) Participation in the VIP is required whether or not the offeror or vendor will work onsite at a Bank facility.
- (b) The VIP also applies to all subcontractors engaged by a Bank vendor to provide Goods, Services, or Construction to the Bank, whether or not the subcontractor will work onsite at a Bank facility. Subcontractors are subject to the same VIP requirements as the vendor.

Commentary

- (1) The Contract Representative or the Procurement Function, for Procurement-Assisted Acquisitions: will inform offerors that they may be required to participate in and pay the cost of the VIP if they are selected to supply Goods, Services, or Construction to the Bank; may choose to make the VIP documents available to offerors to review in advance of award; and may seek to qualify more than one offeror in the VIP prior to making an award if time is of the essence.
- (2) The VIP does not replace and is independent from the personnel background investigations performed by the Federal Reserve Law Enforcement Unit as described in section 2.8.

2.8 Due Diligence: Personnel Background Investigations

2.8.1 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.

2.8.2 Notice to Vendors. The Contract Representative or the Procurement Function, for Procurement-Assisted Acquisitions, should inform offerors that personnel background investigations may be required. In all cases, the appropriate employees in the business area engaging the vendor must initiate any required personnel background investigations with the Federal Reserve Law Enforcement Unit.

2.9 Due Diligence: Information Handling

2.9.1 Information Handling Requirements. The Contract Representative should account for information that may be handled by the selected offeror and corresponding information handling standards in business and technical requirements for an Acquisition. When the Contract Representative anticipates that personally identifiable information may be shared with a vendor, the Contract Representative must take appropriate steps to comply with the Bank's Data Privacy policy.

2.9.2 Security Assessment. 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 Assessment Process is

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available on the Information Security Office's intranet page. The Contract Representative or the Procurement Function, for Procurement-Assisted Acquisitions, will notify the Information Security Office of a planned Acquisition for which an information security review may be required. Information security risk assessments should be completed by the Bank's Information Security Office before the business area signs a Contract with the selected offeror.

3. 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. The Acquisition File does not, however, include original contract documents.
- (c) "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 4.2 of the Policy.

Commentary

- (1) The Policy draws no distinction among "proposals," "bids," and "offers," or among "offerors," "proposers," and "bidders."
- (d) "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 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 4.2.2.)

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- (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.
- (e) “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.
- (f) “Contract” means all types of agreements for the Acquisition of Goods, Services, or Construction, regardless of what the agreement may be called or the format in which it is presented.
- (g) “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.
- (h) “E-sourcing” means an acquisition process utilizing the Internet to conduct a competitive solicitation, generally relying on a hosted web application.
- (i) “Goods” means all property except real property. “Goods” includes property generally offered subject to a license, including, but not limited to, software and data.
- (j) “Legal-FSTC” means the Financial Services, Technology and Contracts division of the Bank’s Legal Function.
- (k) “Master 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. Master Purchasing Agreements usually do not specify a firm quantity of Services or Goods. (Master Purchasing Agreements may be referred to as blanket ordering agreements, master service agreements, volume purchase agreements, or by other agreement titles.)
- (l) “Person” includes individuals and legal entities (e.g., partnerships, corporations, limited liability companies).
- (m) “Procurement-Assisted Acquisition” means an Acquisition facilitated by the Bank’s Procurement Function if the Acquisition has an anticipated value of more than \$100,000 or if the Contract Representative requests assistance with an Acquisition that has an anticipated value of \$100,000 or less or is a data Acquisition.

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- (n) "Procurement Function" means the Bank's centralized procurement office.
- (o) "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.
- (p) "Request for Proposal," or "RFP," means a written solicitation issued by the Bank for quotations or 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.
- (q) "Responsible" means that a 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.
- (r) "Responsive" means a Person has submitted a quotation or proposal that conforms in all material respects to the corresponding RFP requirements.
- (s) "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, are available as 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 4.2.2 of the Policy. 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.
- (t) "Services" means the furnishing of labor, time, or effort by any Person other than a Bank employee.
- (u) "Small Business" means an entity that qualifies as a small business concern under the Small Business Act (15 U.S.C. § 632) and regulations thereunder.
- (v) "Vendor Integrity Program," or "VIP," means the Bank's program to screen offerors and Bank vendors for business and security purposes.
- (w) "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.

4. Policy Requirements

4.1 Supplier Diversity

4.1.1 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 nonemployees, including vendors and visitors to the Bank, are expected to abide by this nondiscrimination policy.

4.1.2 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. The 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.

4.1.3 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 should request a determination from the Legal-FSTC if the Contract Representative 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.

4.2 Competitive Proposals

4.2.1 Conditions for Use. Competitive proposals should be used for any Acquisition in excess of \$100,000 unless, as provided under Section 4.4, 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.

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- (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 of the Policy. Adequate precautions must be taken to treat each offeror fairly and, except for solicitations involving Competitive Visibility or Reverse Auctions (described in section 4.2.2 of the Policy), to ensure that information gleaned from competing proposals is not disclosed to other offerors.

4.2.2 **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.

4.2.3 **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.

4.2.4 **Proposal Time.** A reasonable time to prepare and submit proposals shall be given to prospective offerors.

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

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. (See section 5.4 of the Policy.)

4.2.6 **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

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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.

4.2.7 **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.

4.2.8 **Negotiations and Other Contacts with Offerors.**

- (a) 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 of the Policy. 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.
- (b) 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. Care must be taken to ensure that these contacts are conducted in a manner that is fair and equitable and that do not compromise the integrity of the competitive process or provide an unfair competitive advantage to any 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 (a) of this section.
- (c) 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. The Bank should instruct offerors in RFPs not to contact any Bank employee other than the contacts identified in the RFP. The Contract Representative should instruct other employees and contingent workers in the

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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 the Procurement Function. The Bank may disqualify an offeror who fails to follow this requirement. The restrictions on contacts between the Bank and offerors are 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 4.2.9 of the Policy) 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 4.2.2 of the Policy. 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.

4.2.9 Best and Final Offers

- (a) 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.
- (b) 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.
- (c) 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.

4.2.10 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. Unsuccessful offerors should be notified promptly.

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,

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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 because the Bank has determined that the offeror is not responsible, the Contract Representative 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.

4.3 Small Purchases

4.3.1 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.

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.

4.3.2 Acquisitions Over \$10,000, But Not More Than \$100,000. Unless special circumstances under section 4.4 of the Policy 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 4.2 so long as the Contract Representative or the Procurement Function, in a Procurement-Assisted Acquisition, 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 accepted, except where exigent circumstances do not allow time to issue solicitations or accept proposals in Writing.

Commentary

- (1) 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 4.2.8 and those set forth in part 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 sections 4.2 or 4.3.
- (3) Under exigent circumstances, the Contract Representative may determine that a solicitation may be made, and quotations or proposals submitted, verbally. The Contract Representative or, in a Procurement-Assisted Acquisition, the Procurement Function, 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. In the event that, due to exigent circumstances, verbal solicitations are made or verbal quotations or proposals are received, the Contract Representative or, in a Procurement-Assisted Acquisition, the Procurement Function, must document the substance of the communication between the Bank and offerors. 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.

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4.4 Special Circumstances – Exceptions to Competitive Acquisitions

4.4.1 **General.** The Bank may use procedures other than those for competitive proposals or small purchases in the circumstances described in this section 4.4 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 the Policy is to require as much competition as is practicable in a given situation. The special circumstances in this section 4.4 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 sections 4.2 or 4.3 of the Policy.
- (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 advice from the Procurement Function 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.
- (3) The Bank must comply with requirements in section 1-049 of the Federal Reserve Administrative Manual ("FRAM") 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.
- (4) Exceptions to competitive Acquisitions require all relevant due diligence to be completed, including, for example, credit review, background investigations, conflict of interest reviews, information security assessment, etc. For any exception that continues an existing vendor relationship, the business area is accountable for confirming that the vendor continues to be Responsible. (See section 5.9 of the Policy.)

4.4.2 **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 Goods 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 Goods 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.

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- (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.

4.4.3 **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 4.4.7 of the Policy).
- (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.

4.4.4 **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.

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- (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.

4.4.5 **Contract Renewal.** Bank policy permits the renewal of an existing Contract as an exception without a competitive process under appropriate circumstances. In the special case in which a vendor was selected through a competitive process in which offerors were made aware through the RFP of the possible opportunity to renew at the time of providing their proposal and the Contract with the selected vendor contained a renewal option, exercise of the renewal option is considered to have been competitively bid and, therefore, is not an exception. Because such renewals are considered to be made pursuant to a competitive process, notification of the Board under FRAM 1-049 is not required. Before executing the renewal, the business area is responsible for completing all applicable due diligence and confirming that the vendor continues to be Responsible.

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.

4.4.6 **National Procurement Office ("NPO") Contracts.** If the Bank decides to purchase Goods, Services, or Construction under a Contract executed by the NPO, then the Bank need not 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. The NPO will 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.

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4.4.7 **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 an executive 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. 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.

4.4.8 **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.

4.4.9 **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.

4.4.10 **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.

4.5 Master Purchasing Agreement

The Bank may use a Master Purchasing Agreement when the Bank anticipates recurring requirements for the same or similar Goods, Services, or Construction, but the Bank cannot predetermine the precise quantities or schedules for delivery of Goods or performance of Services, or description of Services that the Bank will need during a definite period. Master Purchasing Agreements should ordinarily be established through a competitive process.

Commentary

- (1) If the Master Purchasing Agreement was not competitively bid, subsequent purchases should be made using competitive procedures. In situations where the Bank has multiple Master Purchasing Agreements for the same or substantially similar Goods 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 Master 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 Master Purchasing Agreement may be limited to furnishing specific items or groups or classes of Goods or Services. A Master Purchasing Agreement may also include established unit prices and/or labor categories and labor rates.
- (3) A Master Purchasing Agreement should not state or imply any commitment by the Bank to place future orders with the offeror, nor may Master Purchasing Agreements be exclusive. Master Purchasing Agreements may be used as a convenience to avoid repetitious negotiation of general terms and conditions, but Master Purchasing Agreements may not be used in any manner to circumvent competition. For example, Master 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 Master Purchasing agreement must begin prior to expiration of the Master Purchasing Agreement, and the total dollar amount of the statements of work must not exceed the ceiling amount, if any, of the Master Purchasing Agreement.

5. Issues in Source Selection

5.1 Release of Acquisition Information

5.1.1 Before Solicitation

- (a) Generally, specific information concerning proposed Acquisitions must not be released to any offeror before solicitation. Except as provided in clause (b) of this section 5.1.1, 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.
- (b) 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 the Procurement Function and the

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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.

5.1.2 Between Solicitation and Award

- (a) 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.
- (b) Until an award is made, contacts with offerors should be controlled and planned by the Contract Representative and, in a Procurement-Assisted Acquisition, the Procurement Function, consistent with the Policy.

5.1.3 After Award

- (a) 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*.
- (b) 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**

5.2.1 Prospective Vendors. Lists of prospective vendors should be established and maintained by the Procurement Function 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.

5.2.2 Consideration of Diverse Suppliers. The prospective offeror list for distribution of an RFP should take into account the Bank's policy, as expressed in section 4.1.2 above, of ensuring that qualified firms interested in doing business with the Bank, including minority- and women-owned businesses, have the maximum practicable opportunity to participate in contract opportunities offered by the Bank.

5.2.3 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

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offerors must abide by the schedule, deadline, and terms established in the solicitation as distributed and as the solicitation may be amended.

5.2.4 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**

5.3.1 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) The Contract Representative and the Procurement Function, for Procurement-Assisted Acquisitions, 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.

5.3.2 Proofs of Concept. Proofs of concept are generally undertaken to provide information about the potential business value of a type of product or solution available in the market for the purposes of informing the Bank's business planning and strategy. The product or solution used for the limited purpose of conducting a proof of concept does not need to be selected through a competitive process. If the Bank determines to move forward with a business plan or strategy using the type of product or solution assessed in the proof of concept, the business area making the Acquisition must follow the acquisition procedures described in this Policy to select the product or solution to be implemented. The supplier of a product or solution used for a proof of concept should not be given any competitive advantage in the Acquisition, and appropriate steps should be taken to minimize the appearance of such an advantage.

5.3.3 Product Trials and Evaluations. Product trials and evaluations may be undertaken to inform a product selection. When product trials or evaluations are undertaken as part of a competitive process, the RFP should notify offerors of the Bank's intention to conduct a product trial or evaluation and the results of the product trial or evaluation should be identified as one of the Bank's evaluation criteria.

5.4 **Amendment of RFP**

5.4.1 Any change to an RFP is to be made by written amendment to the RFP. Amendments made before the time for proposal submission must be provided to all

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prospective offerors to whom the RFP has been furnished and should be issued so as to provide a reasonable time for all prospective offerors to respond. Amendments to an RFP 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 4.2.8 of the Policy. An amendment should be used to furnish information if the lack of such information would be prejudicial to uninformed offerors.

5.5 Cancellation of RFP and Rejection of Offers

5.5.1 An RFP may be cancelled, and proposals may be rejected, in whole or in part as specified in the RFP for any reason.

Commentary

- (1) An RFP may be cancelled for any reason, including situations where there is no longer a requirement for the Goods, Services, or Construction, where amendments to the RFP would be of such magnitude that a new solicitation is desirable, 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

5.6.1 **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.

5.6.2 **Notification to Late Offeror.** When a proposal or modification is received late and cannot be considered, the Contract Representative or the Procurement Function, for Procurement-Assisted Acquisitions, 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 the limited purpose of 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.

5.6.3 **Records.** The following shall, if available, be included in the Acquisition File with respect to each late proposal or modification:

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- (a) a statement or record of the date and hour of mailing, submission, or delivery (if provided to the Bank by the offeror);
- (b) A statement or record of the date and hour of receipt; and
- (c) 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

5.8.1 Clerical Error. If the Contract Representative or the Procurement Function, for Procurement-Assisted Acquisitions, 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.

5.8.2 Other Mistake. When the Contract Representative or the Procurement Function, for Procurement-Assisted Acquisitions, 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) 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 RFP.

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5.9 Responsibility of Offerors

5.9.1 General. An Acquisition shall be made only from, and a Contract awarded only to, an offeror that the Bank determines to be Responsible.

5.9.2 Determinations. The Bank's signing of a Contract indicates the Bank's determination that the prospective offeror is Responsible with respect to the Contract. The unreasonable failure of an offeror to supply information promptly in connection with an inquiry with respect to responsibility may, by itself, 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 3, 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) The extent of due diligence undertaken to determine responsibility may vary depending on the nature and value of the Acquisition, the nature and extent of risks related to the Goods, Services, or Construction to be acquired, and the 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 of the Policy.
- (6) Sources of information that may be used to support determinations of responsibility include, for example:

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- 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.

5.10 Reporting of Anticompetitive Practices

When, for any reason, collusion or other anticompetitive 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

- 5.11.1 Protest Allegation. 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 the Bank. Protests must be submitted promptly following the award notice.
- 5.11.2 Escalation to Resolve. When a protest cannot be resolved or settled by mutual agreement between the protesting party and the Contract Representative, the protesting party may submit the protest to the First Vice President or his or her designee for a decision. Decisions by the First Vice President or his or her designee are final.

Commentary

- (1) In the event of a protest, the Contract Representative should review the facts pertinent to the claim and secure assistance from Legal-FSTC and other advisors as appropriate, including the Procurement Function. If the protest is referred to the First Vice President, the Contract Representative will provide to the First Vice President such data, documentation, information, and support as may be requested by the First Vice President.

5.12 Acquisition Records

Acquisition records shall be retained in an Acquisition File by the business area that completes an Acquisition not assisted by the Procurement Function or by the Procurement Function for Procurement-Assisted Acquisitions and, in either case, disposed of in accordance with the Bank's record retention policies. 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

5.13.1 General.

- (a) To encourage participation by Small Businesses, the Contract Representative should make a reasonable effort to include Small Businesses in solicitations.
- (b) For purposes of the Small Business Program, Contract Representatives, acting in good faith, may rely on written representations by an entity regarding its status as a Small Business. If the Bank determines that an entity has misrepresented its status as a Small Business to the Bank, the Bank may exclude the entity from participating in future Bank Acquisitions.
- (c) Sections 5.13.2 and 5.13.3 shall not apply to Acquisitions of Services that are personal in nature. A Service is personal in nature if it so involves the element of personal knowledge or skill or personal confidence that the Service can be performed only by a particular individual who is selected to be the Bank's vendor or who is employed by or associated with the Bank's selected vendor.

5.13.2 Set-Asides. The Bank may, at its discretion, set aside particular Acquisitions for Small Businesses and, thereby, make the Acquisition opportunity available only to Small Businesses. If a solicitation for a set-aside Acquisition results in a reasonable proposal or quotation from one Responsible Small Business, the award will be made to that Small Business offeror. If no reasonable proposal or quotation is received from a Responsible Small Business, the set-aside may be cancelled and the Acquisition made from an entity that is not a Small Business.

5.13.3 Preferences.

- (a) In a competitive procurement process for an Acquisition with a total expected cost greater than \$100,000, a Responsible Small Business offeror will be given a preference as described in this section in the Bank's evaluation of cost. The Bank may, in its discretion, apply the preference in a competitive procurement with an anticipated value of \$100,000 or less. Except for evaluation of cost, the Bank will evaluate proposals from Small Businesses according to the same standards as it evaluates proposals from offerors that are not Small Businesses.
- (b) The preference for a proposal from a Small Business is to evaluate the price proposed by the Small Business as if the proposed price was reduced by two percent. The reduced price is to be used only for cost comparison and is not to be understood as an actual reduction of the amount the Small Business would accept as payment for the Goods, Services, or Construction covered by the proposal.

5.13.4 Subcontracting

- (a) For an Acquisition where subcontracting possibilities exist and the total cost of the Acquisition is expected to exceed \$500,000 (\$1,000,000 for Construction), the Bank will include as one evaluation criterion in a competitive procurement process the use of Small Businesses as subcontractors. Specifically, offerors will be asked to submit a subcontracting plan covering, at a minimum, plans for using Small Businesses, and procedures for documenting compliance with the proposed plan, and the Bank will consider in its evaluation both the existence and quality of the offerors' proposed subcontracting plans.
- (b) 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

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performance of part of the work or maintain in-house capability, as well as a potential vendor's long-standing relationship with its suppliers. The Contract Representative is to document his or her determination that no subcontracting possibilities exist.

- (c) Bank vendors, acting in good faith, may rely on written representations by an entity the vendor engages as a subcontractor regarding the entity's status as a Small Business. If the Bank determines that a subcontractor has misrepresented its status as a Small Business to the Bank or a Bank vendor, the Bank may exclude the entity from participating in future Bank Acquisitions directly or as a subcontractor.

5.13.5 Program Administration and Recordkeeping

- (a) The Procurement Function will assist Contract Representatives consider the needs of Small Businesses when writing requests for proposals and applying acquisition procedures, including use of set-asides.
- (b) The Procurement Function will maintain records documenting the Bank's practices and procedures related to the Small Business Program and Procurement-Assisted Acquisitions subject to the Small Business Program. Contract Representatives will maintain records documenting Acquisitions subject to the Small Business Program which are not Procurement-Assisted Acquisitions. The Procurement Function will keep Bank senior management informed about activities taken pursuant to the Small Business Program.

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*.

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, or 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 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. The Contract Representative or the Procurement Function should refer any questions about the Service Contract Act or its application to a particular Acquisition to Legal-FSTC.

7. Exceptions

This Policy applies to all Acquisitions except those listed in section 1.2 of the Policy.

8. Consequences for Policy Violation

Failure to comply with this Policy may be grounds for disciplinary actions, up to and including termination.

9. Related Policies & Resources

Policy on Legal Matters, Including Procedures for Contract Review

Vendor Management Policy

10. Policy Administration Information

The Policy is effective as of the Effective Date and changes are to be implemented for all Acquisitions undertaken on or after the Effective Date. For Acquisitions in process on the Effective Date, Policy changes should be implemented to the extent practicable without imposing undue delay or complexity in the pending Acquisition. The Policy updates and supersedes the Acquisition Policy made effective August 5, 2013.

Effective Date:	September 25, 2017
Policy Owner:	Procurement Value Management Function, Corporate Group Financial Services, Technology, and Contracts Division, Legal Function
Policy Contact:	Refer to Business Owner Listing