



PROCUREMENT POLICY

Adopted 5/5/2009; Amended 10/8/13

As a non-profit organization, the Rose Fitzgerald Kennedy Greenway Conservancy, Inc. (the "Conservancy") has a responsibility to make efficient use of its resources in its procurement of goods and services. This policy sets forth the Conservancy's guidelines for selecting vendors and contractors in a manner that assures that the Conservancy receives optimal value when it purchases goods and services.

I. GOALS

Provide assurance to the Board of Directors and the public that

- Best Value (as defined below) is achieved
- good business practices are followed
- conflicts of interest and appearance of same are avoided

II. KEY PRINCIPLES

Key elements to this Policy are the following:

1. Transparency. All vendor relationships are to be documented in accordance with the policies set forth herein.
2. Accountability. All goods and services exceeding the threshold set forth in Section III below shall be competitively procured, unless the acquisition is addressed by one of the exceptions set forth below. The Executive Director shall be responsible for ensuring that a competitive procurement process is conducted when required hereunder.
3. Best Value. For purposes of this Policy, "Best Value" shall mean the most advantageous combination of the following factors, as applicable to each procurement: quality, economic value, timely performance, the procurement and use of recycled products and environmentally preferable products and services, minimal administrative burden, expediency, flexibility in developing alternative business relationships and the continuing participation of quality contractors. The contract determined to provide the Best Value will not necessarily be the lowest cost contract.

III. PROCUREMENT PROCESS

1. Contracts Below \$45,000. The Executive Director or his or designee may authorize one-time purchases, or multiple purchases from a single vendor or contractor, of goods and services with a total dollar value that does not exceed \$45,000. In connection with such purchases, the Executive Director or his or her designee shall make reasonable efforts to seek Best Value, which shall include, whenever possible, seeking pricing and specifications from multiple vendors or contractors as appropriate and to document such process. In the event that the Executive Director or his or her designee

recommends entering into more than one separate contract with a single vendor or contractor during the same Fiscal Year, and the aggregate value of such contracts exceeds \$45,000 in such Fiscal Year, the Executive Director shall seek approval of such recommendation from the Finance, Audit, and Risk Management Committee.

2. Contracts Between \$45,000 and \$100,000. Procurements for all contracts for the purchase of goods or services valued at greater than \$45,000 and less than \$100,000 in a Fiscal Year shall comply with the provisions of this Section.

(a) Solicitation and Responses. The Executive Director or his or her designee shall define clear scopes of work (in the case of services) or specifications (in the case of goods) and seek responses and price proposals from, whenever possible, at least three vendors or contractors to determine which vendor or contractor offers Best Value.

(b) Evaluation and Selection. The Executive Director or his or her designee shall evaluate vendor or contractor responses and price proposals and recommend to the Finance, Audit, and Risk Management Committee, at a duly scheduled meeting open to the public, the vendor(s) or contractor(s) that he or she determines has offered the Best Value response to the goals and performance requirements. In the event that the Finance, Audit, and Risk Management Committee approves the recommendation, it shall authorize the Executive Director or his or her designee to negotiate a final contract with the selected vendor or contractor materially consistent with the terms of the vendor or contractor's response to the solicitation and/or the recommendation approved by the Finance, Audit and Risk Management Committee, which authorization may include a contingency amount in addition to the anticipated contract amount

3. Contracts of \$100,000 or Greater. With respect to contracts for the purchase of goods or services valued at \$100,000 or more annually, the Conservancy shall issue a Request for Proposals (an "RFP") to solicit responses from qualified bidders under a competitive procurement process for the provision of goods or services, and shall comply with the provision of this Section 3.

(a) Content of RFPs and Responses. The goal of all RFPs shall be to obtain the Best Value for goods or services for the Conservancy. A form of general terms and conditions to RFPs is attached as Appendix A; RFPs may contain terms that vary from the provisions by Appendix A, as appropriate in light of goods or services to be procured. RFPs shall require proposers to provide responses that, among other things, contain the following information, as applicable: a description of the ability to provide the specified goods or services; the price at which they agree to provide such goods or services; and information

regarding past, present and potential clients or business relationships the bidders have with other parties that either do pose or could pose a conflict of interest if they were to be selected to provide goods or services to the Conservancy. Appendix B, Sample Contractor Qualifications, contains additional information that the Conservancy may request proposers to provide in response to an RFP, as appropriate. RFPs may include total contract price ceilings or certain other procurement requirements.

- (b) Evaluation Criteria. RFPs may be used to establish criteria which prospective bidders must satisfy in order to be placed on a list of qualified contractors. These criteria may include technical expertise, experience, quality of performance, location, availability of goods and services, rates, prices, catalogs of goods or services, or other criteria relevant to a particular procurement. Individual RFPs may describe specific evaluation criteria to be used in the determination of Best Value.
 - (c) Selection of Bidders. The Executive Director or his or her designee shall evaluate vendor or contractor responses to RFPs and recommend to the Board of Directors, at a duly scheduled meeting open to the public, the vendor(s) or contractor(s) that he or she determines has offered the Best Value response to the RFP. In the event that the Board of Directors approves the recommendation, it shall authorize the Executive Director or his or her designee to negotiate a final contract with the selected vendor or contractor consistent with the terms of the vendor or contractor's response to the RFP, which authorization may include a contingency amount in addition to the anticipated contract amount.
4. Procurement File. The Conservancy shall maintain a paper or electronic procurement file relating to each procurement of goods or services. The file shall contain documents such as the RFP, proposals received in response to RFPs, and data or other information relevant to the procurement and selection of a contractor, the executed contracts, correspondence with the contractor, and any applicable approvals or justifications.
5. Execution of Contracts. After the selection of a vendor or contractor pursuant to Section 1-3 above, the Executive Director or his or her designee may negotiate the final contract with the selected vendor or contractor, consistent with the vendor or contractor proposal and the vote of the Finance, Audit, and Risk Management Committee or Board of Directors, as applicable.
- (a) In the event that the Executive Director or his or her designee is not able to finalize a contract with a selected vendor or contractor, he or she may terminate negotiations, and may seek approval from the

Finance, Audit, and Risk Management Committee or Board of Directors, as set forth in Sections III (2) and (3) above, as applicable, to negotiate with the vendor or contractor providing ranking next-highest in the determination of Best Value.

- (b) Each contract shall require that the selected vendor or contractor provide the Conservancy with notice of any actual or potential conflict of interest that arises in connection with its performance of the contract, and shall reserve the right of the Conservancy to terminate any contract as a result of any such potential or actual conflict of interest.

6. Amendments to Contracts. Amendments to contracts previously entered into by the Conservancy that involve an increase in the contract amount to be paid by the Conservancy beyond any approved contingency shall be approved in accordance with this Section 6.

(a) Contract amendments where the total increase in contract amount is less than \$20,000 may be made by the Executive Director. If the amount of the total contract value (as amended) is between \$45,000 and \$100,000, the Executive Director shall notify the Finance, Audit, and Risk Management Committee of the amendment at its next regularly scheduled meeting. If the amount of the total contract value (as amended) is more than \$100,000, the Executive Director shall notify the Board of Directors of the amendment at its next regularly scheduled meeting.

(b) Contract amendments where the total increase in contract amount is \$20,000 or more shall be approved as follows:

- (1) By the Executive Director, if the amount of the total contract value (as amended) is less than \$45,000,
- (2) By the Finance, Audit, and Risk Management Committee, if the amount of the total contract value (as amended) is between \$45,000 and \$100,000, and
- (3) By the Board of Directors, if the amount of the total contract value (as amended) is more than \$100,000.

<i>Total contract value ...</i>	<i>Contract increase is < \$20K</i>	<i>Contract increase is >= \$20K</i>
<i>...remains below \$45K</i>	Executive Director; no notice	Executive Director
<i>...increases to or remains \$45K-\$100K</i>	Executive Director, notify FARMC	FARMC
<i>...increases to or remains > \$100K</i>	Executive Director, notify Board	Board of Directors

7. Artificial Division of Procurements: The procurements of goods and services shall not be artificially divided to intentionally circumvent the guidelines and thresholds set forth in Sections III (1)-(3) above.

8. Vacancy of Executive Director: During the term of any vacancy in the position of Executive Director, the functions of the Executive Director set forth in this policy shall be performed by the person fulfilling the Executive Director's duties.

IV. EXCEPTIONS TO THE PROCUREMENT PROCESS

The Conservancy may contract for goods or services without following the process set forth in Section III of this policy in the following circumstances:

- A. Emergency Purchases. An emergency purchase of goods or services shall be permitted whenever the Executive Director determines that an unforeseen crisis or incident has arisen which requires or mandates the immediate acquisition of goods or services to avoid substantial harm to the functioning of the Rose Fitzgerald Kennedy Greenway or the Conservancy or whenever the health, welfare or safety of employees or other persons or serious damage to property is threatened. Emergency expenditures of between \$45,000 and \$100,000 shall be reported to the Chair of the Finance, Audit, and Risk Management Committee within five days and announced at the next duly scheduled Finance, Audit, and Risk Management Committee meeting. Emergency expenditures of \$100,000 or more shall be reported to the Chair of the Board of Directors within five days and announced at the next duly scheduled Board of Directors meeting.
- B. Interim Contract. The Conservancy may enter into an interim contract to prevent a lapse of contract performance whenever an existing contract has been or will be terminated or suspended prior to the end of its original term or whenever a contractor is unable to complete performance under a contract. An interim contract may be offered to the bidder that offered the next Best Value under the original competitive procurement process and under the same terms and prices as offered in that bidder's original response. The duration of an interim contract shall be limited to the remaining time available under the duration stated in the original proposal or, if applicable, the RFP (as defined below), including any options to renew. If the Conservancy is unable to negotiate a contract with any of the original bidders who submitted responses, the Conservancy shall conduct a new competitive procurement process pursuant to this policy.
- C. Transactions with Government Agencies. The Conservancy may enter into contracts with the Commonwealth of Massachusetts, the City of Boston, or any state or municipal governmental agency, board, commission, authority, department or other public instrumentality without adhering to the processes set forth in Section III.
- D. Sole Source Procurements. The Conservancy may enter into contracts for the provision of goods or services which, after reasonable investigation, the Executive Director determines in writing can only be reasonably provided by one source. Sole source procurements of between \$45,000-\$100,000 must be

approved in advance by the Finance, Audit, and Risk Management Committee. Sole source procurements of \$100,000 or more must be approved by the Board of Directors.

- E. Other Contracts. The Conservancy may enter into a contract for goods or services without adhering to the processes set forth in Section III after a vote that (a) determines that such contract, if subject to the procurement process under this Policy, would significantly impair the Conservancy's ability to carry out its mission, and (b) authorizes such contract to be procured by an alternate process.

Appendix A

ROSE FITZGERALD KENNEDY GREENWAY CONSERVANCY, INC.

Sample Terms and Conditions for RFPs

1. Responses. RFPs shall provide that any response submitted by a bidder shall be considered a firm offer and shall remain effective unconditionally for a minimum of 90 days unless a longer period is specified in an RFP, or unless extended by the Conservancy upon prior notice to bidders.
2. Procurement Amendments. The Conservancy may, at any time prior to the execution of a definitive contract, and without penalty, amend an RFP or change the procurement requirements, scope, budget or procurement schedule upon notice to bidders.
3. Procurement Cancellation. The Conservancy may for any reason, and at any time prior to the execution of a definitive contract, and without penalty, notify bidders of a cancellation of a competitive procurement process and the rejection of all responses.
4. Corrections to a Submitted Response. The Executive Director shall determine whether to allow the correction of non-material errors or omissions in a response. Non-material errors or omissions are matters of form rather than substance and may include clerical errors or minimal or insignificant mistakes that can be corrected without prejudice to other bidders.
5. References. The Conservancy shall have the right to request references at any time during the procurement process and at any time during the period of contract performance. The Conservancy may verify any references included in a bidder's response and conduct any other reference or credit checks as it deems appropriate. The Conservancy may consider any written references, including documentation of performance records of a bidder on file at the Conservancy or solicited from any other entity, documentation of reference checks or other documentation solicited by or submitted to the Conservancy during the procurement process.
6. Disqualification. The Conservancy may disqualify any response that it determines to be unresponsive, including, but not limited to:
 - (a) Responses which are received after the deadline for submission specified in an RFP.

- (b) Responses that fail to meet, address or comply with material requirements in an RFP, including instructions for submission, content or format.
 - (c) Responses which indicate collusion or unfair trade practices by one or more bidders agreeing to act in a manner intended to avoid or frustrate the bidding process or any law or regulation.
 - (d) Responses submitted by a bidder, or which identify a subcontractor, currently listed on the Conservancy's "Non-Qualified Bidder" list.
 - (e) Responses submitted by a bidder which has an actual or potential conflict of interest, as determined by the Audit, Risk Management and Finance Committee, based on the information disclosed on the response or on any other credible information regarding the bidder obtained from any reference or other source.
7. Best and Final Offer. At any time after submission of responses and prior to the final selection of bidders for contract negotiation or execution, the Executive Director shall have the option to provide bidders with an opportunity to provide a "best and final offer" and may limit the number of bidders selected for this option.
8. Evaluation and Selection. A Selection Committee comprised of the Executive Director and/or other representatives of the Conservancy will evaluate all submittals in accordance with the following criteria:
- (a) Contractor Experience and References – similarity of Contractor projects to the Conservancy project in purpose, size, scope and complexity and schedule; positive references from the owners of these projects; and, if applicable, evidence of the Contractor's project management capabilities;
 - (b) Financial Stability of Contractor – positive balance sheets, evidence of bonding capacity;
 - (c) Record of Successful Project Completions – including litigation avoidance (the ability to resolve conflicts without lawsuits, arbitrations, fines or convictions) and project records without terminations, failure to complete the work, or payment of liquidated damages;
 - (d) Contractor's Safety record – an experience modifier of better than average is desirable, as is evidence that the Contractor has a formal safety policy or program in place and consistently complies with its own policy or program;

- (e) Clarity and comprehension of the Contractor's project approach presentation and construction management plan, if applicable, indicating thorough understanding of the challenges typical of the project type and capacity to deliver the project successfully; and
 - (f) Quality of individual team members' experience and coherence of the proposed project organization, with emphasis on problem-solving business relationships. The Contractor will submit the names, qualifications, and relevant experiences of the proposed project executive, preconstruction/cost estimator lead staff member, project manager, and superintendent. Evidence and assurances that the Contractor will make all attempts to keep the original team members involved for the entire life of any particular project are desirable.
9. Rejection of Responses. The Conservancy reserves the right to reject any or all responses if it determines that such action is in the best interest of the Conservancy. Any response that is incomplete, conditional, or obscure may be considered non-responsive and the Conservancy may reject such response. In addition, the Conservancy may reject any response that is not prepared and submitted in accordance with all requirements hereof; or which contains contingencies, additions not called for, omissions, errors, or irregularities of any kind; provided, however, that the Conservancy reserves the right to waive any and all informalities or minor irregularities, including without limitation receipt of any omitted materials or information subsequent to submission.
10. No Confidentiality. The Conservancy is subject to certain aspects of the Public Records Law. The Conservancy shall have no obligation to treat any information submitted to it in response to a Request for Proposals as proprietary or confidential. The Conservancy's obligation with respect to protection and disclosure of such information will at all times be subject to any applicable laws. The Conservancy will have the right to use all or portions of the Contractor's submittal and accompanying information as it considers necessary or desirable in connection with the project in question. By the submission of the required information and materials, the respondent grants to the Conservancy an unrestricted license to use such information and materials in connection with such project.
11. Request for Qualifications. The Conservancy may issue Requests for Qualifications prior to the issuance of an RFP. Any Request for Qualifications issued by the Conservancy will be solely a request for information. It does not represent an offer nor does it confer any rights on any respondent. The Conservancy will not be responsible under any circumstances for any costs incurred by any respondents to any Request

- for Qualifications. The Conservancy will reserve the right to modify, suspend or cancel any procurement at any time at its sole discretion.
12. No Appeals. The decisions of the Selection Committee with respect to prequalification or selection of respondents will be final and will not be subject to appeal.
 13. Notification of Selected Bidders. The Conservancy shall determine the timing and method of notifying bidders of the bidder(s) selected for contract negotiation.
 14. Press Conferences or News Release Restrictions. No bidder shall make any news release or announcement, hold any press conference, or publish or make any other public disclosure concerning its selection or non-selection for a contract prior to the Conservancy's public release of said information.
 15. Debriefing. An RFP may permit non-successful bidders to request a debriefing to be conducted after contract execution with the selected bidder(s). Debriefings are designed to identify the weak areas of a bidder's response and suggest improvements for future procurements. Comparisons with other responses will not be made during a debriefing. If an RFP is silent as to an opportunity for a debriefing, the Conservancy shall have the option to grant or deny a debriefing and may limit the number of debriefings granted.

Appendix B

ROSE FITZGERALD KENNEDY GREENWAY CONSERVANCY, INC.

CONTRACTOR QUALIFICATIONS

In accordance with the Procurement Policy previously promulgated by the Board of Directors of the Rose Fitzgerald Kennedy Greenway Conservancy, Inc. (the "Conservancy") (which Procurement Policy is incorporated herein by this reference), the Executive Director of the Conservancy has developed the following criteria for qualifying bidders being considered for contracts for the provision of goods or services to the Conservancy (each, a "Contractor"). Each bidder seeking to be "qualified" by the Conservancy for purposes of the Procurement Policy will submit the following information to the Conservancy in response to a Request for Qualifications for a particular project:

1. A notarized certificate certifying that the Contractor and all senior executives of the Contractor (i) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contract by any Federal agency, by the Commonwealth of Massachusetts or by the City of Boston, (ii) have not within the last five years been convicted of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing any private, public or government (Federal, State, or Local) contract or subcontract, (iii) shall not knowingly use undocumented workers in connection with any work performed by the Contractor under any contract with the Conservancy, and (iv) shall not knowingly or recklessly alter, falsify or accept altered or falsified documents from any such worker(s).

2. A cover letter identifying the contact individual for the Contractor and an executive summary detailing the key elements and factors that differentiate the Contractor from other respondents. This cover letter should also disclose any actual or potential conflict of interest arising in connection with the Contractor's performance of a contract with the Conservancy as a result of obligations it has to another client or as a result of any other business or personal relationship. If the Contractor is not aware of any such actual or potential conflict of interest, it should indicate that in the cover letter. This information will be requested with respect to any major subcontractor engaged by any Contractor with respect to specific projects. For purposes of this section, a "major" subcontractor will mean any subcontractor whose subcontract is contemplated to be greater than 25% of the general contract.

3. Completion of AIA Document A305, 1986 edition, listing general business information and financial capacity;

4. A list of lawsuits and arbitrations to which the Contractor is a party in regard to the Contractor's professional relationships within the last three years, including a list (with respect to both the Contractor and all senior executives of the Contractor) of all convictions or fines for violations of state or federal law;

5. Audited financial statements for the Contractor for the two most recent fiscal years;

6. A commitment letter from a surety company licensed to do business in the Commonwealth of Massachusetts and whose name appears on United States Treasury Department Circular 570 stating the surety's willingness to bond the Contractor in the full sum of the contract at 120% of the budget for the project;

7. Information on the Contractor's safety record including its workers' compensation experience modifier for the prior three years and a copy of the Contractor's safety policy or program;

8. Information on the Contractor's record with respect to minority business enterprise and women business enterprise inclusion on recent projects;

9. Information regarding the Contractor's experience on projects of similar size, scope and complexity, including references from the owners of such projects;

10. Information on any projects where the Contractor was terminated, failed to complete the work, or paid liquidated damages or a statement that the Contractor has never been terminated, failed to complete the work or paid liquidated damages on any project, as applicable;

11. Information regarding the Contractor's use of recycled products and environmentally preferable products and services including, as applicable, organic products, on recent projects and regarding the Contractor's commitment to sustainability practices.

12. A summary of the Contractor's operating philosophy, including information regarding the Contractor's commitment to ethically responsible practices and the Contractor's philosophy and procedures with respect to dispute avoidance and resolution;

13. Identification of the Contractor's team members, with specific information on key project personnel, including resumes documenting individual and joint experience and references and position descriptions, an indication of the percentage of work on projects which the Contractor usually subcontracts out, and a list of the major subcontractors normally used by the Contractor; and

14. Project organization chart showing lines of communication amongst team members and the Conservancy.