

COLLECTED BOARD POLICIES
OF THE
BI-STATE DEVELOPMENT AGENCY
OF THE
MISSOURI-ILLINOIS METROPOLITAN DISTRICT

Chapter 50. Purchasing

<u>Section</u>	<u>Page</u>
Section 50.010 Procurement and Contract Administration.....	50-1
Section 50.020 Protests	50-7
Section 50.030 Disadvantaged Business Enterprises	50-7
Section 50.040 Concessions	50-8
Section 50.050 Jefferson National Expansion Memorial Projects	50-9

Section 50.010 Procurement and Contract Administration (effective 02/26/99; revised 08/14/09; 06/24/22)

A. **Definitions** (revised 08/14/09; 06/24/22)

1. “Competitive Bid Procurement” means a procurement method by which bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
2. “Competitive Negotiation Procurement” means a procurement method by which proposals are solicited from a number of qualified sources and the award is made to the responsible bidder or offeror whose proposal is most advantageous to the Agency with price and other factors considered.
3. “DBE Plan” means the Agency’s plan for Disadvantaged Business Enterprises (as defined by federal law).
4. “Chief Procurement Officer” means the Vice President of Procurement, Inventory Management, and Supplier Diversity.

5. "President & CEO" means the President & CEO of the Agency or an authorized designee.
6. "Fair Market Value" means the value of an item as determined by the amount offered by the highest bidder.
7. "Independent Cost Estimate" means a process whereby the estimated cost of a good or service to be procured is established by Agency staff or Agency representatives prior to the procurement; and the resulting estimate is used to assess the fair and reasonableness of an offered price.
8. "Non-Competitive Procurement" means a method by which goods and/or services are procured from a single offeror.
9. "Procurement Department" means the Agency's Procurement Department.
10. "Responsible" means a bidder or proposer who has all financial and technical capabilities to deliver materials or perform the work, i.e., adequate finances, capable of complying with required delivery, and satisfactory past performance.
11. "Responsive" means an offer which conforms in all material respects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the offeror.

B. General Policy (revised 08/14/09)

1. It is the policy of the Agency to procure all needed goods and services (exclusive of real property) at the lowest total end-use cost, maintaining acceptable quality standards, and in accordance with the Agency's DBE Plan. All procurement methods and processes shall be conducted in a manner that ensures fair and open competition among all qualified interested parties.
2. Contract administration methods shall be maintained to assure that goods and services received by the Agency meet the terms and conditions of the contract.
3. Procurement practices shall comply with laws, regulations and guidelines of the federal government, state governments and other political subdivisions or agencies and the provisions of grant or funding agreements, if applicable.
4. The Procurement Department shall direct the procurement and contract administration of all goods and services on behalf of the Agency except as

otherwise provided by Board Policy or as approved by the President & CEO.

C. Procurement Methods. Generally, Agency procurement methods are dictated by provisions of federal law or grant or funding agreements entered into in connection with funding of particular procurements, projects or activities of the Agency. The Procurement Department shall conduct procurements in accordance with procedures required by applicable law, if any, and the provisions of applicable grant or funding agreements, if any. Where no procurement procedure is required by provisions of applicable law or grant or funding agreements, the Procurement Department shall establish procedures for such procurement, which are designed to meet the policies of the Agency as set forth in this Article.

D. Award Criteria

1. The following factors shall be considered in awarding procurement contracts:
 - a. conformance to solicitation requirements;
 - b. bidder's or offeror's previous record of performance and quality;
 - c. technical and financial capability of bidder or offeror to render satisfactory service; and
 - d. value, price or cost as determined by the Agency's independent cost estimate and price or cost analysis.
2. Prior to award, bids and proposals must be determined to be responsive and responsible to all Agency requirements. Cost or price must be determined to be fair and reasonable and there must be an independent cost estimate and analysis to support such a determination. The Agency reserves the right to reject any and all bids, waive minor informalities and contract in the best interest of the Agency.
3. Competitive Bid Procurement awards must be made to the lowest responsive, responsible bidder.

E. Award Authority (revised 06/24/22)

1. The Board of Commissioners shall approve the following procurements:
 - a. Competitive Negotiation Procurements which exceed \$500,000
 - b. Non-Competitive Procurements which exceed \$100,000
 - c. Procurements for a contract term, including options, which exceed five (5) years
 - d. Procurements which exceed the amounts budgeted or otherwise approved by the Board of Commissioners for such project, function or service

2. The President & CEO shall approve the following procurements, without further authorization by the Board of Commissioners, provided that (i) the term of such contract, including options does not exceed five (5) years, and (ii) the amount of such contract (which shall be calculated including all options) is within the amounts budgeted or otherwise approved by the Board of Commissioners for such project, function or service:
 - a. Competitive Bid Procurements
 - b. Competitive Negotiation Procurements which do not exceed \$500,000
 - c. Non-Competitive Procurements which do not exceed \$100,000
 - d. Single Bids where a review is conducted to verify that specifications were not unduly restrictive and to survey potential sources to determine why they chose not to submit a bid. In this instance, competition may be determined to be adequate, and the procurement will qualify as a valid Negotiated Procurement, with Negotiated Procurement Procedures to apply.

F. Contract Options (revised 06/24/22)

3. The President & CEO may exercise contract options if they have been evaluated and determined to be in the best interest of the Agency. The following factors shall be considered in making such evaluation and determination:
 - a. the continued need for the goods or services;
 - b. the performance of the contractor;
 - c. the fairness and reasonableness of cost; and
 - d. the availability of sufficient funds to cover the option cost.

The option price may not exceed the option price set forth under the initial contract and cannot exceed the amount budgeted by or otherwise approved by the Board of Commissioners for such project, function or service.

G. Contract Modifications

1. The President & CEO may enter into modification(s) to contracts awarded pursuant to this Article if the cost of the modification is within (a) the amount budgeted or otherwise approved, for that contract, by the Board of Commissioners; or (b) is within the originally established contract contingency approved by the Board of Commissioners. Contract modifications which do not satisfy such parameters must be approved by the Board of Commissioners.

2. The President & CEO is authorized to extend contract performance periods up to 180 days in the aggregate beyond the original contract performance period, provided that no single extension shall exceed 90 days. Contract extensions in excess of 180 days must be approved by the Board of Commissioners.

H. Fuel and Energy Source Procurements (revised 8/14/09) In order to take advantage of fluctuations in the volatile commodities markets and procure fuel and energy sources in the most timely, cost-effective manner, the Chief Procurement Officer is authorized to procure fuel and energy sources (e.g. diesel fuel, natural gas, electricity and gasoline, etc.) through a competitive process approved by the President & CEO without approval by the Board of Commissioners of specific purchases.

I. Unsolicited Proposals

1. It is the policy of the Agency to encourage the submission of new and innovative ideas. Where such submissions are not in response to Agency solicitations, they shall be considered unsolicited proposals and
2. Unsolicited proposals may be accepted if:
 - a. they have been thoroughly evaluated and determined to be in the best interest of the Agency;
 - b. their cost has been determined to be realistic;
 - c. there are sufficient funds to cover the cost; and
 - d. the award of such procurement complies with the Agency's procurement policy and practices set forth in this Article.

J. Sale and Disposition of Assets and Property (revised 09/03/99 and 8/14/09)

1. It is the policy of the Agency to sell and dispose of assets and property no longer needed for Agency purposes. Such sale and disposition shall be for fair market value or appraised value, unless otherwise approved by the Board.
2. The President & CEO is authorized to approve contracts disposing of assets (excluding real property) having a fair market or appraised value up to \$100,000. The Board of Commissioners shall approve all sales and dispositions in excess of \$100,000 fair market or appraised value.
3. The Chief Procurement Officer shall be responsible for establishing procedures regarding the sale and disposal of excess equipment, materials and supplies.

K. Code of Ethics and Conflict of Interest

1. Any Agency officer, commissioner, employee, or agent involved in procurement matters shall adhere to the Agency's Code of Ethics and Conflict of Interest policies.
2. No Agency Commissioner, employee or agent shall at any time prior to award of a procurement contract reveal technical and price information, other than information resulting from a public opening or a public meeting of the Board of Commissioners or its Committees.

L. Conflicts in Policy In the event of any conflict between this policy and the provisions of applicable grant or funding agreements, the President & CEO shall resolve such conflicts in such a manner that is in the best interest of the Agency. If such resolution would violate the provisions of this Article or other Board Policy, Board of Commissioner approval is required.

M. Waiver of Policy

1. The President & CEO may waive this procurement policy, but only in an emergency. An emergency is any situation that requires immediate correction to avoid jeopardizing the health or safety of either the general public or Agency personnel, that jeopardizes public or private property, or which risks the interruption of service. The President & CEO shall immediately notify the Board Chair of any waiver of the provisions of this policy, which require approval by the Board of Commissioners.
2. Any employee who deviates from this policy without the prior, written approval of the President & CEO or Board of Commissioners is subject to appropriate disciplinary action, including release from employment.

N. Management Procedures (revised 8/14/09)

1. All actions taken by the President & CEO and the Chief Procurement Officer shall be consistent with this policy.
2. The Chief Procurement Officer shall establish procedures to ensure compliance with all aspects of this policy.
3. The Chief Procurement Officer shall provide quarterly reports to the Board of Commissioners relating to procurement activities, which exceed \$100,000, including contract modifications and award of options.

O. Procurement Records (revised 8/14/09) The Chief Procurement Officer shall maintain records relating to procurements conducted by the Procurement Department, which shall include:

1. the rationale for the method of procurement,
2. the basis of and authority for the award,
3. the basis for the contract price, and
4. any other documentation required by law, regulation, or funding or grant agreement, if applicable.

Section 50.020 Protests

A. Policy (revised 8/14/09) It is the policy of the Agency to conduct all procurement and contracting actions in a fair and impartial manner. Consistent with this policy, the Agency has established a process to address protests in a timely manner. The procurement protest process, as detailed in the management procedures, provides for the presentation of facts by the protester, an initial decision by the Agency, an opportunity to appeal the decision and then a final decision by the Agency. The Agency shall publish its Protest Procedures in every solicitation package. The Chief Procurement Officer has the authority to issue the initial decision on all protests. The President & CEO has the authority to issue the final decision on all protests.

The President & CEO may request the Chairperson of the Board of Commissioners to review the appeal and issue the final decision when, in the President & CEO's opinion, it is in the best interest of the Agency. The Board of Commissioners may establish policies regarding circumstances under which the Board, a Committee thereof, or other persons designated by the Board will make the final decision for the Agency.

Section 50.030 Disadvantaged Business Enterprises (revised 06/24/22)

A. DBE Program The disadvantaged business program has been developed to meet the requirements established by the United States Department of Transportation, the Federal Transit Administration, as identified in 49 CFR Part 23 and 26, and policies and the procedures of the Bi-State Development Agency.

B. DBE Plan. The Bi-State Development Agency recognizes its responsibilities to the communities it serves. It is the policy of the Agency to involve, to the greatest extent possible, socially and economically disadvantaged individuals in all phases of procurement activities. In order to honor this commitment, the Board reviews and approves a management-prepared, comprehensive DBE Plan every five years. Each year specific goals for participation are established, and accomplishments are assessed in an annual summary, which is reviewed by the Board.

C. Goals (revised 06/24/22) In order to achieve its goals, the Agency encourages participation in its procurement activities, which includes consultant contracts, construction contracts and purchase of goods and services related to all projects of the Agency. Specific methods used include:

1. special efforts designed to aid disadvantaged firms in overcoming obstacles to their participation, and
2. encouragement of sub-contractual arrangements, joint ventures between disadvantaged firms and non-disadvantaged firms, and
3. other methods outlined in the full DBE Plan.

Section 50.040 Concessions (revised 06/24/22)

A. Policy. It is the policy of the Agency to enter into revenue contracts with suppliers in order to provide customer amenities at strategic Agency locations, and to generate additional revenue for the ongoing operation of the Agency.

B. Award of Concessions. The award of all concession contracts will follow standard Agency procurement methods and be consistent with all local, state and federal regulations. The level of authority will follow those outlined in the Board Policy on Purchasing.

C. Regulation of Concessions (revised 06/24/22) Concession examples are: vending machines, confectioneries, automatic teller machines (ATMs), overnight mail drop boxes, food carts and restaurants, video dispensers or rentals, dry cleaners, shoe repair, souvenirs, bike lockers, key service, automotive services, bookstores, florists, etc.

Concession treatments/structures and location must be approved by the Agency in advance of their construction, installation, or operation. Treatments and structures will be designed to complement the architecture of the Agency's facilities and the flavor of the surrounding environment or community. Concession treatments/structures may not impede vehicular or pedestrian traffic, nor restrict the visibility of directional signs and information material, nor encroach on necessary sight lines.

Concessions must comply with local municipal ordinances and planning and zoning requirements.

Contracts may, at the Agency's discretion, contain terms to assure the concessionaire of adequate protection against loss of investment in structures, fixtures, improvements, equipment, supplies, and other tangible property provided by the concessionaire for the purposes of the contracts. The Agency does not provide assurances against loss of anticipated profits resulting from the discretionary acts, policies, or decisions of the Agency occurring after the Concession Agreement's effective date, which may affect the concessionaire's operations.

If the Concession contract involves the placement of structures or other property of the concessionaire on Agency property, the concessionaire maintains a possessory interest in all such structures, fixtures or improvements which are acquired or constructed pursuant to said Agreement, consisting of all incidents of ownership except legal title, which vests with the Agency.

Contracts or operations authorized thereby or controlling interests therein may not be transferred, sold, or assigned, or assets thereof encumbered in any manner, except with the written approval of the Agency.

D. Revenues. Contracts must include the method of remittance of revenues to the Agency.

Revenue from the concession contracts is retained by the Agency and used to offset the need for public subsidy. Revenues pledged to a particular operation are accounted for in accordance with the regulatory requirements.

In lieu of revenue, the Agency may accept an equivalent value of goods and/or services, including but not limited to capital improvements, information services, and site maintenance.

E. Donations. Donation of a material item, product, or service is to be acquired under the same guidelines as those applicable to a concession contract for which competition exists if the donation provides an identifiable, material return or remuneration to the donor once accepted by the Agency.

Section 50.050 Jefferson National Expansion Memorial Projects (added effective 05/23/14; revised 06/24/22)

A. Proposed Request from the National Park Service (revised 06/24/22) Proposals received by the Agency from the National Park Service for projects or improvements for the Jefferson National Expansion Memorial ("Memorial Projects") are required by the Services Agreement between the National Park Service and the Agency to describe the scope of work for each improvement or project; provide the estimated specified amount or amounts needed to fund each improvement or project; and describe how each improvement or project will benefit the Jefferson National Expansion Memorial.

B. Approval Authority

1. The Board of Commissioners shall approve any Memorial Project with an estimated cost which exceeds \$500,000.

2. The President and CEO shall approve any Memorial Project with an estimated cost which is equal to or less than \$500,000.

C. Award Authority

1. The Board of Commissioners shall approve: (a) the award of any competitive negotiated procurement for a Memorial Project with an estimated cost which exceeds \$500,000; and (b) any non-competitive procurement for a Memorial Project with an estimated cost which exceeds \$500,000.

2. The President and CEO shall approve: (a) the award of any competitive bid procurement for a Memorial Project; (b) any competitive negotiated procurement for a Memorial Project with an estimated cost equal to or less than \$500,000; and (c) any non-competitive procurement for a Memorial Project with an estimated cost equal to or less than \$500,000.

D. Funding Authority (revised 06/24/22) The Executive Vice President and Chief Financial Officer shall create a special project account for each such Memorial project into which the Executive Vice President and Chief Financial Officer shall transfer the funds requested for each improvement or project from the JNEM Beneficial Fund to be held until expended or until such time as the improvement or project is cancelled or completed, at which time any remaining funds will be re-deposited to the JNEM Beneficial Fund.