

ORDINANCE SBD #19-59


ADOPTED by the Board of Directors of Pace, the Suburban Bus Division of the RTA, June 19, 2019.

DIRECTORS 12 Canning, Carr, Claar, Guerin, Hastings, Marcucci, Schielke,
VOTING AYE: Shepley, Soto, Tamley, Wells, and Chairman Kwasneski.


DIRECTORS 0
VOTING NAY:

DIRECTORS 1 Larson
ABSENT:

(Seal)


Richard Kwasneski, Chairman

Attest:


Laura Nieciak, Board Secretary

ORDINANCE SBD #19-59

WHEREAS, Section 4.06 of the Regional Transportation Authority ("RTA") Act establishes regulations governing public bidding for the RTA and its Service Boards; and

WHEREAS, Pace has a need for procurement rules and regulations based on the RTA Act and the Federal Transit Administration's ("FTA") Circular 4220.1F (or as amended) for federally funded procurements; and

WHEREAS, the minimum dollar threshold for micro-purchases and small purchases have been increased to \$10,000 and \$250,000, respectively, for FTA funded procurements.

BE IT ORDAINED:

1. The Board of Directors of Pace hereby adopts the attached Regulations Governing Public Bidding and that said Regulations shall be effective June 19, 2019.
2. The Executive Director of Pace is hereby authorized to execute, implement, administer and enforce said Regulations.
3. Detailed procurement policies and internal operating procedures shall be developed and implemented to enforce the principles contained in said Regulations.
4. ORDINANCE SBD #18-14 adopting the previous Pace Regulations Governing Public Bidding is hereby superseded.

**PACE, THE SUBURBAN BUS DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY'S REGULATIONS GOVERNING PUBLIC BIDDING**

I. PURPOSE

- 1.01 These regulations have been adopted to promote full and fair competitive bidding in procurements and contracts.
- 1.02 These regulations have been adopted to ensure compliance with Section 4.06 of the Regional Transportation Authority ("RTA") Act.
- 1.03 These regulations have also been adopted to ensure that all federally funded procurements adhere to the requirements set forth in the Federal Transit Administration's Circular 4220.1F (or as amended), Third Party Contracting Guidance or most recent version, and the Federal Transit Administration's Master Agreement, as amended.

II. DEFINITIONS

2.01 Definitions. As used in these Regulations:

- a. "Act" means the Regional Transportation Authority Act.
- b. "Metropolitan Region" means all territory included within the territory of the RTA as provided in the Act, and such territory as may be annexed to the RTA.
- c. "Pace" means the Suburban Bus Division of the Regional Transportation Authority.
- d. "Board" means the Board of Directors of Pace.
- e. "Professional Services" means occupations requiring professional licenses such as accountants, auditors, banking, architects, doctors, health and pharmaceutical, legal, engineers, realtors, land appraisers and surveyors, and lawyers.
- f. "Public Transportation Facilities" means all equipment or property, real or personal, or rights therein, useful or necessary for providing, maintaining, or administering public transportation within the metropolitan region or otherwise useful for carrying out or meeting the purposes or powers of Pace, except roads, streets, highways, or bridges or toll highways or toll bridges for general public use.
- g. "Transportation Agency" means any, body politic, municipal corporation, public authority, unit of local government, other than Pace, which provides public transportation, any local mass transit district created pursuant to the

"Local Mass Transit District Act," as now or hereafter amended, and any suburban transportation district created pursuant to the "Urban Transportation Act," as now or hereafter amended, which districts are located in whole or in part within the metropolitan region.

III. COMPETITIVE BIDDING

- 3.01 Purchases of Equipment, Construction Related Services, and General Services. Except as otherwise provided in these Regulations, all contracts or purchase orders for the acquisition of equipment, including Rolling Stock, supplies, construction (involving cost of more than \$40,000), or related services, or general services (not professional services as detailed below), involving a cost of more than \$250,000.00, shall be let by free and open bidding, after public notice, and awarded to the lowest responsive and responsible bidder via the Invitation for Bid ("IFB") process unless exempted by Board ordinance.
- 3.02 Purchases of Professional Services. Except as otherwise provided in these Regulations, all contracts or purchase orders for the acquisition of professional services (accountants, auditors, banking, architects, doctors, health and pharmaceutical, legal, engineers, land appraisers and surveyors, and lawyers) other than Architectural and Engineering ("A&E") services directly leading to construction, alteration, or repair of real property, involving a cost of more than \$250,000 shall be let by competitive proposals or the Request for Proposal process, after public notice, and awarded to the highest rated, responsive and responsible proposer.
- 3.03 Purchases of Architectural and Engineering or related services that directly lead to the construction, alteration, or repair of real property. All contracts, including design-build contracts and purchase orders for the acquisition of Architectural and Engineering ("A&E") and related services that directly lead to the construction, alteration, or repair of real property shall adhere to qualifications-based selection process or the Request for Qualifications ("RFQ") process. All federally funded A&E procurements and design-build contracts that lead directly to the construction, alteration, or repair of real property shall adhere to the Federal Brooks Act (P.L. 92-582) as well as state laws pertaining to the acquisition of A&E services and shall be let by competitive proposals or the Request for Proposal ("RFP") process after public notice and awarded to the highest rated, responsive and responsible bidder.
- 3.04 Sales. Except as otherwise provided in these Regulations or allowed by federal Regulations, all sales and disposal of Pace property, excluding real property, shall be let by free and open bidding unless, as determined by the Chief Procurement Officer, property is deemed to be scrap value. The posting of Pace property on any publicly available auction website shall satisfy this public bidding requirement.
- 3.05 Exceptions. The competitive bidding requirements do not apply to the following:
- a. Services of (i) expert witnesses, (ii) law firms, (iii) attorneys, and (iv) other

providers of Professional Services whose assistance is, in the opinion of the General Counsel, necessary to resolve a legal matter, subject to approval by the Chairman of the Board.

- b. Services of lobbyists and legislative consultants, subject to approval by the Board and the signature of the Chairman of the Board.
- c. When federal funds are not utilized, procurements for which the Board determines that Competitive Procurement is disadvantageous.
- d. After receipt of a single non-Responsive Bid to an IFB, Pace may negotiate with the single bidder to cure any deficiencies in the bid.
- e. Where the contract is for purchases valued below \$10,000.
- f. Where the contract is for the purchase of the services of a bond trustee (referring to trustees for the Pace's municipal debt).
- g. Where the transaction is for the purchase of training courses or seminars.
- h. Where the transaction is for the payment of industry association membership dues or professional licensing fees.
- i. Where the transaction is for the purchase of publication subscriptions.
- j. Where the transaction is for the purchase of radio, television, online, or print advertising.
- k. Where the transaction is for the purchase of services of a celebrity spokesperson, musical performer, model or master/mistress of ceremonies.
- l. Where the transaction is for the purchase of insurance brokerage services and related policies (with procurement methods used by brokers approved by the Chief Procurement Officer and General Counsel).
- m. Where a transaction is for the purchase of employee and Board travel expenses.
- n. Where the transaction is for the purchase of space leased for Pace hosted events.
- o. The immediate delivery of supplies, material, or equipment or performance of services, directly related to the provision of public transportation services by Pace; when the safety of Pace, its employees, riders, or the general public is jeopardized; in the case of public exigency; and where the Executive Director or Chief Procurement Officer of Pace has made a written determination that an emergency requires immediate delivery or supply thereof, and that this written

determination be presented to the Board within five working days.

- p. Goods or services that are solicited from a limited number of sources, or justifiably limited to a brand name product(s), or limited firms (for non-Federal procurements) provide said goods or services.
- q. Contracts for maintenance or servicing of equipment which are made with the manufacturer or authorized service agent of that equipment where the maintenance or service can only be performed by the manufacturer or authorized service provider so as not to void the warranty.
- r. Contracts for the use or purchase of proprietary Information Technology (hardware or software) that adhere to the Federal Transportation Administration requirements as determined by the Chief Procurement Officer.
- s. Contracts for maintenance or servicing of proprietary hardware or software which are made with the manufacturer or authorized service provider of that proprietary hardware or software where the maintenance or service can only be performed by the manufacturer or authorized service provider of that proprietary hardware or software.
- t. Goods or services procured from a governmental agency where federal funds are not utilized or where state law or regulations does not prohibit the same.
- u. The purchase of real estate.
- v. Cooperative purchases, including a contract awarded utilizing a schedule type joint procurement program procured/administered by another governmental entity (*e.g.*, the State of Illinois Joint Purchasing Program or Western States Contracting Alliance Program) or a schedule type cooperative purchasing agreement procured/administered by another governmental entity (*e.g.*, the General Services Administration Cooperative Purchasing Program for Schedules 70 and 84), where the other governmental entity has utilized a competitive bidding process in the original procurement.
- w. A joint procurement in which another governmental entity serves as the lead agency, and competitively awards contracts in which several governmental entities may draw upon to meet their needs.
- x. The acquisition of utility services.
- y. The acquisition of public transportation equipment including, but not limited to, buses and rolling stock, provided that: (i) it is determined by a vote of 2/3 of the then Directors of the Board that a negotiated acquisition

process offers opportunities with respect to the cost of financing of the equipment, its delivery, or other allowable advantageous situations; (ii) a notice of intention to negotiate for the acquisition of such public transportation equipment is published in a newspaper of general circulation within the City of Chicago or the Metropolitan Region inviting proposals from qualified vendors; and (iii) any contract with respect to such acquisition is authorized by a vote of 2/3 of the then Directors of the Pace Board.

- z. Purchase of service agreements with any Transportation Agency.
- aa. Purchases, sales, or other contracts/agreements with any unit of local government.
- bb. Intergovernmental agreements with other units of government for the purpose of providing, facilitating or supporting public transportation and related support services.
- cc. Assignment of contract authority in which an assignability clause is contained in another governmental entity's contract that provides for the assignment of all or a portion of the specified deliverables, or its unneeded contract authority, as originally advertised, competed, evaluated, and awarded by the other governmental entity.

IV. PROCUREMENTS

- 4.01 Public Notice. All bids/proposals to award purchase orders or contracts subject to Article III, Competitive Bidding, shall be published at least once in a newspaper of general circulation in the Metropolitan Region at least ten calendar days, excluding Saturdays, Sundays, and legal holidays, in advance of the date announced for the receiving and opening of bids/proposals, and shall simultaneously be posted at the principal office of Pace.
- 4.02 Content of Public Notice. Advertisements for bids/proposals shall describe the character of the proposed contract in sufficient detail to enable the bidders/proposer to know what their obligations will be, either in the advertisement itself, or by reference to detailed plans and specifications available on Pace's website or on file at the time of the publication of the first announcement.

The advertisement shall also state the date, time, and place for the opening of bids or receipt of proposals, and no bids shall be received subsequent to the date and time indicated in the announcement. An extension of date and/or time may be granted for the opening of such bids or receipt of proposals upon issuance of an addendum to all bidders/proposers and with notice given on Pace's website of the date to which the bid opening has been extended.

- 4.03 Additional Notice. Nothing in these Regulations shall be construed to prevent Pace from providing additional notice for the solicitation of bids/proposals.
- 4.04 Collusion. Any agreement or collusion between or among bidders/proposers or prospective bidders/proposers in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, shall render the bids/proposals of such bidders/proposers void. Each bidder/proposer shall accompany its bid/proposal with a sworn statement or affirmation that it has not been a party to any such agreement.
- 4.05 Opening of Bids. All bids that are procured utilizing the non-electronic competitive bid process shall be publicly opened, read aloud, and recorded in writing. There shall be a minimum of two Pace staff present at such bid opening with one reading bids aloud and one visually confirming and recording the bids.
- All bids that are procured utilizing the electronic procurement system shall be publicly opened and read aloud, the electronic system automatically records all bids. There shall be a minimum of two Pace staff present at such bid opening with one reading bids aloud and one visually confirming the bids. The name of each bidder/proposer, the amount of each bid/proposal, and other relevant information shall be publicly posted on Pace's website within 48 business hours after opening.
- 4.06 Records Required. Each bid/proposal received under these Regulations shall be entered on a record showing the name of each bidder/proposer and indicating the apparent low bidder or the highest ranked proposal. An official copy of each awarded purchase order or contract, together with all attachments, proposals, assignments, and written consents thereto, shall be retained by Pace for such period of time after termination of the contract during which an action against Pace might ensue under applicable laws of limitation.
- 4.07 Determining Responsive Bidder/Proposer. In determining the responsiveness of any bidder/proposer Pace may consider factors including but not limited to timeliness of submission, proper completion of documents, DBE/SBE goal compliance, and other pertinent responsiveness considerations required in the solicitation.
- 4.08 Determining Responsible Bidder/Proposer. In determining the responsibility of any bidder/proposer, Pace may take into account other factors in addition to financial responsibility, such as past records of transactions with the bidder, experience, adequacy of equipment, special or unique licenses, certification or skills required in the performance of the contract, ability to complete performance within a specified time, whether they are debarred by the federal government or other governmental agency, and other pertinent responsibility considerations.
- 4.09 Rejection of Bid/Proposal. Any bid/proposal, in whole or in part, may be rejected by Pace for any reason.

V. CONTRACTS AND CHANGE ORDERS

5.01 Assignment of Contracts. Contracts or purchase orders shall not be assignable or sublet by the awarded contractor without prior, written authorization of Pace's Chief Procurement Officer.

5.02 Authorization and Execution.

- a. Every contract that is issued by Pace that exceeds \$150,000, but does not exceed \$250,000, shall be signed by the Chief Procurement Officer or General Manager/Chief Operating Officer as designated by the Executive Director of Pace.
- b. Every contract that is issued by Pace that exceeds \$250,000 shall be signed by the Executive Director of Pace.
- c. Every contract that is let by the Invitation for Bid process or through a schedule type joint procurement program (e.g., the State of Illinois Joint Purchasing Program or Western States Contracting Alliance Program) or a cooperative purchasing agreement (e.g., General Services Administration Cooperative Purchasing Program) with another governmental entity valued at more than \$500,000.00 that is subject to these regulations to which Pace is a party, shall be submitted to and authorized by the Board before being executed by the Executive Director of Pace.
- d. Every contract that is let by the Request for Proposal or Request for Qualifications process and valued at more than \$250,000 that is subject to these Regulations, shall be submitted to and authorized by the Board before being executed by the Executive Director of Pace.
- e. Every contract that is deemed a sole source, except those acquisitions handled following "Emergency Procurement Procedures" as detailed above and valued at more than \$150,000 that is subject to these Regulations, shall be submitted to and authorized by the Board before being executed by the Executive Director of Pace.

5.03 Conflict of Interest. Members of the Board, officers and employees of Pace, their spouses, their children (including step children), their parents, their brothers and sisters and their children (including step children) are prohibited from having or acquiring any contract or any direct pecuniary interest in any contract which will be wholly or partially performed by the payment of funds or the transfer of Pace property. Any firm, partnership, association, or corporation from which any member of the Board, officer or employee of Pace is entitled to receive more than seven and one-half percent (7½%) of the total distributable incomes is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by payment of funds or the transfer of Pace property.

Any firm, partnership, association, or corporation from which members of the Board, officers, employees of Pace, their spouses, their children, their parents, their brothers and sisters and their children are entitled to receive in the aggregate more than fifteen percent (15%) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by the payment of funds or the transfer of Pace property. Nothing in this section invalidates the provisions of any bond or security offered for sale or sold by or for Pace. Further, Members of the Board, officers and employees of Pace, their spouses, their children, their parents, their brothers and sisters and their children, shall adhere to all applicable sections of Pace's Ethics Ordinance.

- 5.04 Contracts Violating Regulations. Any purchase order or contract executed in violation of these Regulations shall be null and void as to Pace.
- 5.05 Authorized Procurement Personnel. All procurement actions and contract negotiations that fall under the control of this Procurement Ordinance (those procurements that exceed \$150,000) shall be handled under the aegis of the Chief Procurement Officer as designated by the Executive Director of Pace. All such procurement actions shall be overseen and handled by authorized procurement personnel only, with the exception of those actions exempted by Pace's check request policy (FI-06), Intergovernmental Agreements authorized by the Legal Department, or actions covered under PC-02-D, Construction Field Changes. No other department shall solicit bids, proposals, quotes, or engage in any other procurement action, including committing to or soliciting verbally or otherwise contract or change the contract and applicable negotiations (collectively referred to herein as "procurement actions").

VI. DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND SMALL BUSINESS ENTERPRISES (SBE)

- 6.01 DBE/SBE Program ("Program"). It is Pace's policy to give every vendor, including DBEs/SBEs equal opportunity to conduct business with Pace. Pace's DBE Liaison Officer (DBELO), shall set annual goals for the portion of Pace contracting that will be awarded to DBEs/SBEs, and report such goals to the Board.
 - a. The DBELO will review all federally funded procurements in excess of \$150,000 and all other non-federally funded procurements in excess of \$150,000, with the exception of joint procurements/cooperative purchasing agreements, intergovernmental agreements, or sole source procurements, to determine if the contract has subcontracting opportunities. If such subcontracting opportunities exist, the DBELO will assign a DBE/SBE Goal to the procurement. The DBE/SBE goal, if any, will be included in the solicitation documents.
 - b. DBE/SBE goals can be satisfied in one of two ways: (1) by committing to meet the DBE/SBE goal in its entirety; or (2) by documenting its attempt to meet

the goal through detailed, corroborating evidence.

- c. Compliance with a DBE/SBE Goal is a matter of bidder/proposer responsiveness. For an IFB or RFP to be responsive, the bidder/proposer must either commit to meeting the DBE/SBE goal or demonstrate good faith efforts to meet the DBE/SBE goal.
- d. Under the Program, if Pace determines that a bidder/proposer is not responsive because it has not met the DBE/SBE goal or has not documented sufficient good faith efforts, the bidder will be notified in writing about their right to request administrative reconsideration. The Reconsideration Official is Pace General Counsel.



Memorandum

DATE: June 8, 2019

TO: Rocky Donahue
Executive Director

FROM: Melinda J. Metzger
General Manager and
Chief Operating Officer

Rebecca Howe
Chief Procurement Officer

SUBJECT: Revision of Pace Regulations Governing Public Bidding

Background

The Regional Transportation Authority ("RTA") Act establishes regulations governing public bidding for the RTA, Pace, and Metra (70 ILCS 3615/4.06(a)). Pace's Regulations Governing Public Bidding must comport with the RTA Act and Federal Transit Administration ("FTA") requirements.

Discussion

In response to statutory changes set forth in the National Defense Authorization Acts, the Office of Management and Budget issued a memorandum affecting Federal agencies that award grants or cooperative agreements. The memorandum raises the minimum dollar threshold for micro-purchases and small purchases to \$10,000 and \$250,000, respectively, for FTA funded procurements. Pace must revise its Regulations Governing Public Bidding in order to comport with these new thresholds.

In addition to increasing the minimum dollar thresholds to conform with FTA requirements, the revised Pace Regulations Governing Public Bidding, attached hereto, also incorporate changes to the exceptions to public bidding requirements to more closely conform with those of the RTA.

The attached Ordinance shall supersede Pace Ordinance SBD #18-14, adopted by the Pace Board of Directors on February 14, 2018.

Recommendation

Staff recommends approval of an Ordinance adopting the attached Regulations Governing Public Bidding.

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