

PROCUREMENT

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ATLANTA BELTLINE, INC.
PROCUREMENT POLICY

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100.01 Purpose.

Atlanta BeltLine, Inc. (ABI) procures goods and contractual services to advance the mission of the organization. In pursuit of this goal it desires to procure goods and services at the best prices available in sufficient quantities, consistent with standards of service and quality. When procuring construction, goods and contractual services, ABI will follow sound and prudent business practices, and promote the full and equitable economic participation of all segments of the community consistent with the policies and procedures established by the ABI Board of Directors. With these objectives in mind, ABI will use its best efforts to ensure that disadvantaged business enterprises have an equitable opportunity to participate in the procurement process. It is, therefore, the purpose of this policy to provide for the fair and equitable treatment of all persons involved in procurement by ABI, to maximize the value of private and public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

100.02 Procurement Defined

Procurement is the financial process by which buying, purchasing, renting, leasing or otherwise obtaining any supplies/goods, equipment, contractual, professional or construction services are acquired from a qualified responsible and responsive vendor through a competitive process and are properly obtained, monitored and controlled. It also includes all functions that pertain to obtaining any supplies/goods, equipment, contractual, professional or construction services including a description of requirements, selections and solicitation of sources, preparation and award of contracts, and all phases of contract administration. Disposal of ABI surplus, not including real estate, is a procurement function.

100.03 Application of this Policy.

This Policy applies to the expenditure of funds irrespective of their source, with the exception of procurement involving state of Georgia or federal funds where state or federal government procurement regulations prevail. Nothing in this Policy prevents ABI from complying with the terms and conditions of any grant, gift, bequest, Public/Private Partnership (P³) or cooperative agreement.

This policy shall not apply to:

- A. Purchase or disposition of Real Estate/rents/leases of real property;
- B. Accounting Services
- C. Capital leases;
- D. Water, sewer, gas, electrical, communication and other utility services;
- E. Agreements of the City of Atlanta or other governmental entities where an executed document exists;
- F. Postage;
- G. Dues and memberships in trade or professional organizations;
- H. Subscriptions to periodicals and educational material;
- I. Items for resale;
- J. Catering and event planning for occasional events;
- K. Legal Services

100.04 Determinations.

Written determinations required by this Policy shall be retained in the appropriate official contract file.

100.05 Definitions.

For the purpose of this Policy, the following terms, phrases, words and their derivations shall have the meanings given herein unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular Article or provision. Words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory:

ABI: Atlanta BeltLine, Incorporated.

Alternate Bid: A bid submitted with an intentional substantive variation to a basic provision, specification, term or condition of the solicitation. The solicitation document must state whether alternate bids or proposals will or will not be considered.

Architectural and Engineering: Services that require performance by a registered architect, landscape architect, planner or engineer. Professional services of an architectural or engineering nature that are associated with research, planning, development, design construction, alteration or repair of real property.

Best and Final Offer (BAFO) in competitive negotiation: The final proposal submitted after negotiations are completed that contains the vendor's most favorable terms for price and services or products to be delivered.

Best interest of ABI: A term which grants the President and CEO or his/her designated representative the discretion to take the most advantageous action on behalf of the organization usually due to applicable conditions or in the absence of law or regulation.

Bidder: One who submits a response to an invitation to bid (ITB).

Brand Name or Equivalent Specification:

- A. A specification whereby the commodity or product is described by a brand name or unique identifier that distinguishes it from its competition. It may be a name, term, symbol, design or any combination thereof.
- B. Using one or more manufacturers' brand name, with identifying model numbers, to describe the standards of quality, performance and other characteristics needed to meet the requirements of the solicitation, and which invites bids for equivalent products from any manufacturer. A requested single brand name tends to limit competition as vendors may not sell that particular brand and all other items will be excluded from further consideration.

Business: Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change Order: A written alteration that is issued to modify or amend a contract or purchase order. A bilateral (agreed to by all parties) or unilateral (organization orders a contract change without the consent of the contractor) request directs the contractor to make changes to the contracted

scope of work or specifications. In reference to construction contracts, it relates primarily to changes caused by unanticipated conditions encountered during construction not covered by the drawings, plans or specifications of the project, also called a Contract Amendment.

Construction: The process of utilizing labor to build, alter, repair, improve, or demolish any structure, building or public improvement; generally does not apply to routine maintenance, repair, or operation (MRO) of existing real property.

Contract:

- A. A contract is an obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act. The essential elements of a contract are: an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent; legality of purpose; and definiteness.
- B. A legally binding promise, enforceable by law.
- C. An agreement between parties with binding legal and moral force, usually exchanging goods or services for money or other considerations.

Contractor: Any individual or business having a contract with ABI to furnish goods, services, or construction for an agreed-upon price.

Contract Modification: Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractual Services: A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. Some of the areas in which service contracts are issued: maintenance, overhaul repair, servicing, rehabilitation, moderation or modification of supplies, systems or equipment, routine maintenance of real property (grounds keeping) and janitorial services.

Cure Notice: In a termination for default, if the contractor fails to perform some provisions other than those dealing with the timely delivery, or fails to make progress as to endanger performance altogether, ABI must give the contractor written notice of the failure and allow a specified time for cure (remedy) of the failure before issuing a termination notice.

Data: Recorded information, regardless of form or characteristic.

Debarment:

- A. To prohibit a contractor from bidding on future requirements for cause for an indefinite period of time, but no less than three (3) years.

- B. A sanction brought against a contractor whereby they may not engage in future procurement actions.
- C. To exclude or shut out of future solicitations and contracting opportunities.

Designee: A duly authorized representative.

Electronic: Electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Emergency Purchase: A purchase made due to an unexpected and urgent request where health and safety or the conservation of public resources is at risk. Usually formal competitive bidding procedures are waived.

Fair and Reasonable Price: A price that is fair to both contracting parties, considering the agreed upon conditions, promised quality, and timeliness of contract performance. Procurement may use a variety of techniques to assure a fair and reasonable price, such as sealed competitive bidding, competitive proposals, price and cost analysis, previous purchases, and benchmarking to other contracts.

Firm Fixed Price (FFP): A type of contract providing for a price that is not subject to adjustment on the basis of the contractor's cost experience in performing the contract. FFP contracts place maximum risk and full responsibility on the contractor for all costs and resulting profit or loss. They provide maximum incentive for the contractor to control costs and perform effectively and impose a minimum administrative burden upon the contracting parties unless changes are issued or unforeseen events occur during performance.

Firm Fixed Price with Economic Adjustment: A contract under which the contractor is reimbursed at a fixed price for all services and material provided that allows for periodic price increases or decreases at one or more stated intervals during the contract term. The amount of the increase or decrease is based on the movement of an independent price index (escalator) for goods, services, or labor.

Fixed Asset (capital asset): Physical assets such as property and equipment. An asset with a life cycle of more than one year with a value of more than a certain prescribed limit set by accounting standards or by ABI policy.

Formal Procurement: Any procurement that meets or exceeds the ABI formal procurement qualification and dollar threshold and requires an ITB, RFQ (qualifications), RFP or other accepted procurement method.

Goods (supplies): Anything purchased other than services or real property. All tangible items purchased or consumed by ABI.

Governmental Body: Any department, commission, council, board, bureau, committee, institution, legislative body, government, corporation, or other establishment.

Grant:

- A. A sum of money given by an organization for a particular purpose.
- B. A transfer of Federal Government funds to state or local governments to support or stimulate programs authorized by federal or state laws, to accomplish objectives that are locally defined and managed under a broad federal or state program.
- C. The furnishing of assistance by a jurisdiction whether financial or otherwise, to any person to support a program authorized by law; does not include an award whose primary purpose is to procure goods, services or construction.

Informal Procurement: Any procurement not exceeding the formal procurement dollar threshold. Typically quotes are obtained but a formal competitive procurement method may be used in some cases.

Invitation to Bid (ITB): All documents used to solicit competitive or multi-step sealed bids. This is also known as Invitation for Bid (IFB).

Limited Competition: Occurs when the goods or services required by ABI are available from only one responsive and responsible source, or from only a limited number of responsive and responsible sources, and no other type of goods or services will satisfy ABI requirements. Contracts may be awarded without competition when the President and CEO determines in writing that competition is limited. Thorough documentation as to the reason(s) for the limited competition is required.

- A. Typical reasons include emergencies, technologically incompatible components, replacement parts or service that may void an active warranty, and brand-specific procurement that may offer competition among manufacturer-approved distributors of inhomogeneous goods.

May: Denotes the permissive in a contract clause or specification.

Mistake in Bids: Minor errors made in the form of bidding; for example, failure to insert a decimal point. Clerical mistakes, apparent on the face of the bid, may be corrected. Once a mistake is suspected, the Procurement Officer is required to request verification of the bid.

Offeror: One who submits a proposal in response to a Request for Proposals in competitive negotiation.

Person: Any business, individual, union/collaboration, committee, club, other organization, or group of individuals.

Procurement: Purchasing, renting, leasing, or otherwise acquiring any goods, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Officer: Any person duly authorized to manage and monitor all aspects of ABI's procurement processes. May enter into and administer contracts as authorized by the President and CEO, and make written determinations with respect thereto. The term also includes an authorized representative acting within the limits of authority.

Professional services: Services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training, or direct assistance.

Public Notice: Announcement made by ABI concerning a solicitation or other information of general public interest. These are usually placed in a newspaper of general circulation, on a web-site, in a circular, magazine or other widely available medium.

Public-Private Partnership (PPP or P³): Public-Private Partnerships are contractual agreements formed between ABI, a public agency and/or a private sector entity that allow for greater private sector participation in the delivery, funding and financing of surface transportation projects, as defined by Georgia State Law.

Regulation: A statement by a governmental body (typically federal or state) to implement, interpret, or prescribe law or policy, or to describe organization, procedure, or practice, often promulgated in accordance with an administrative procedures act.

Request for Proposal (RFP): A competitive procurement method for obtaining goods, services and construction in which discussion and negotiations may be conducted with responsible offerors who submit responsive proposals, where price is not the only evaluation factor. RFP's may include a provision for the negotiation of Best and Final Offers and could be a single step or multi-step process.

Request for Statement of Qualifications (RFQ): A procurement method used to obtain statements of the qualifications of potential teams or individuals (i.e. consultants) to gauge potential competition in the marketplace, prior to issuing the solicitation. Often used as a standard by which to develop a short-list of highly qualified individuals or firms and subsequently obtain proposals from the short-listed individuals or firms. Price is not a factor of evaluation criteria and is not included in the statement of qualifications.

Responsible bidder: A contractor, business entity or individual who is fully capable to meet all of the requirements of the solicitation and subsequent contract. The bidder must possess the full capability, including financial and technical, to perform as contractually required. The bidder must be able to fully document the ability to provide good faith performance.

Responsive bidder: A contractor, business entity or individual who has submitted a bid or proposal that fully conforms in all material respects to a solicitation and all of its requirements, including all form and substance.

Services: The furnishing of labor, time, or effort by a consultant or contractor, not involving the

delivery of a specific end product, but rather reports which are the intended purpose of the required performance. This term shall not include employment agreements or collective bargaining agreements.

Shall: Denotes the imperative in contract clauses or specifications.

Show Cause Notice: Prior to issuing a termination for default, the Procurement Officer may issue a show cause notice to the contractor citing the reasons for the default and the consequences of a termination for default. The notice will require the contractor to “show cause” why the contract should not be terminated and will provide the contractor an opportunity to discuss the reasons for the problems.

Signature: A manual or electronic identifier or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

Sole Source: A situation created due to the inability to obtain competition. This may result because only one vendor possesses the unique ability or capability to meet the particular requirements of the solicitation. This non-competitive method is frequently used to continue software maintenance after the warranty period expires; when the product or service is required immediately due to emergency, or for example, requirements falling under Homeland Security. The Procurement Officer requires a justification from the requesting department explaining why this is the only source for the requirement.

Specification: A precise description of the physical or functional characteristics of a product, good or construction item. This is a description of goods and/or services. A description of what ABI seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract. Specifications generally fall under the following categories: design, performance, combination (design and performance), brand name or approved equal, qualified products and samples.

Special Procurement: A type of procurement as practicable under the circumstances and initiated by the Procurement Officer for an unusual or unique situation. The contract is not awarded based on the requirements of competitive sealed bidding or proposals that could be contrary to the public interest or the needs of ABI.

Surety Bond: A pledge or guarantee by an insurance company, bank, individual or corporation on behalf of the bidder/offeror which protects against default or failure of the principal to satisfy the contractual obligations.

Surplus:

- A. Results in an overstock situation when the quantity of goods on hand exceeds the quantity of goods needed. The overstocked goods may be returned to the vendor, sold at auction or disposed of in a method acceptable to the organization.

- B. Refers to goods or materials that are obsolete or no longer needed by ABI and are designated for disposal. Surplus may become available for disposal outside of the organization.

Suspension: The temporary exclusion of a person or company from participating in a procurement activity because of previous illegal or irresponsible action.

Tax Allocation District (TAD): A tax-allocation district, also known as tax increment financing, is a defined area where real estate property tax monies gathered above a certain threshold for a certain period of time (typically 25 years) are to be used for a specified improvement.

Tie Bids: Bids submitted by two or more bidders that have identical pricing. An investigation into how the bids are identical is necessary. The first bid received is typically awarded the contract, with final approval of the President and CEO.

Two-Step Bid: A combination of competitive procedures designed to obtain benefits of sealed bidding when adequate specifications are not available. This may also be applied to a request for proposal negotiated procurement. Step one consists of a request for technical proposals, evaluations and discussion without pricing, and the selection of bidders whose proposals are considered most acceptable; step two consists of the submission of sealed priced bids by those who submitted acceptable technical proposals in step one.

Vendor: One who sells goods or services; a supplier.

100.06 Public Access to Procurement Information.

Procurement information shall be a public record to the extent provided by O.C.G.A 50-18-70, and shall be available to the public as provided by applicable statutes.

100.07 Authorization for the Use of Electronic Transmissions.

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the applicable statutory, regulatory or ABI guidance for use of such media, so long as such guidance provides for appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

100.08 Authority of the Procurement Officer.

The Procurement Officer shall serve as the central Procurement Officer for ABI. The Procurement Officer has the authority and duty, except as limited by law or policy to procure or contract for all goods and contractual services needed by any department which derives its support from ABI, in accordance with procurement procedures as prescribed by this policy. The Procurement Officer shall recommend to the Chief Operating Officer and the President and CEO policy that will govern internal procedures for ABI procurement. Unless otherwise provided by Policy or written directive, the Procurement Officer shall have authority to negotiate and/or oversee the negotiation of procurement for ABI. ABI employees shall procure goods and services in accordance with this policy. Any procurement not in conformance with this policy will not be legally binding on ABI. In addition to the authority conferred in this Section and in addition to any other powers and duties conferred by this policy, the Procurement Officer shall:

- A. Have the authority and responsibility to determine the appropriate procurement method for goods and services.
- B. Have the authority to reject procurement documents that are incomplete as this completeness is essential to proper procurement actions. This includes requisitions, specifications, scope of work, etc. The Procurement Officer will advise the COO of these determinations.
- C. Have the authority to conduct negotiations as appropriate, as to price, delivery, and terms. ABI General Counsel will develop the final contract terms and documents. The COO will approve a final contract before CEO signature and execution.
- D. Adopt operational procedures governing the internal functions of the Procurement Office.
- E. Ensure compliance with this Policy and implement procedures by reviewing and monitoring procurement conducted by any designee, department or official delegated authority herein.
- F. Sell, trade, donate, auction or otherwise appropriately dispose of ABI surplus property. The President and CEO shall approve disposal recommendations in advance of the disposal.
- G. Establish procedures, consistent with this Policy, governing the procurement, management, control, and disposal of any and all goods, services and construction procured by ABI unless exempt herein.
- H. Establish and recommend amendments when necessary to the COO and General Counsel, rules and procedures authorized by this policy and any others necessary to its operation. The President and CEO shall approve all amendments in advance of their application.
- I. Establish standards applicable to procurement that may warrant award on a sole source basis. The Procurement Officer shall determine in writing that there is only one source for the required good, service or construction. The Procurement Officer shall conduct or oversee the negotiations, as appropriate, as to price, delivery, terms and award Sole Source procurement pursuant to section 100.20.
- J. Notwithstanding any other provision of this Policy, make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in section 100.21, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract or emergency procurement file.
- K. Act to procure for ABI a suitable quality in goods and services at the least expense to ABI.
- L. Prohibit collusive or restrictive bidding and conduct a full and open competitive process for goods and services procured through the normal process.

- M. Monitor the use of specifications for goods, services, and construction required by ABI.
- N. Have the authority to declare as nonresponsive and irresponsible bidders or offerors who default on their quotations, bids and proposals, to disqualify them from receiving any business from ABI for a stated period of time.
- O. Have the authority to recommend to the COO the debarment or suspension of a vendor for cause from consideration for award of contracts with ABI for a stated period of time in accordance with the provisions of Section 100.44.
- P. Recommend the adoption of such rules and procedures as appropriate for the requirement of corporate surety bonds for contracts.
- Q. The Procurement Officer periodically may make a recommendation to the COO and President and CEO for an adjustment to the sealed bid threshold. Such recommendation may be based upon inflationary and other market trends and factors that make a higher threshold necessary for process efficiency.

100.09 Delegation of Authority by the Procurement Officer.

The Procurement Officer may delegate limited authority to designee(s) from the requesting department within the scope of a specific procurement in support of Procurement Officer's direct responsibilities.

100.10 Procurement Advisory Committees and Other Advisory Groups.

The President and CEO appoint Advisory Committees to assist with respect to specifications or procurement in specific areas, and with respect to any other matters within the authority of the Procurement Officer.

100.11 Discrimination by Contractors is Prohibited.

All contracts for goods, services, and construction to which ABI is a party, shall contain a nondiscrimination in employment clause stating that the contractor will not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, ancestry, disability/handicap condition, sexual orientation, gender identity, marital status, veterans status or any other basis protected by federal, state or local laws.

100.12 Methods of Source Selection.

All ABI contracts shall be awarded by one of the following methods:

- A. Competitive Sealed Bidding (ITB);
- B. Competitive Sealed Proposals (RFP);
- C. Procurement less than the formal bid threshold (quotes);
- D. Sole Source Procurement (non-competitive);
- E. Emergency Procurement;
- F. Limited Competition and Special Procurement;
- G. Competitive and Non-Competitive Selection Procurement for Designated Types of Services and Technology
- H. Requests for Statements of Qualifications (RFQ)

I. Requests for Information (RFI)

100.13 Requisition and Estimates. Departments shall submit to the Procurement Officer, a detailed requisition (Request to Procure) for all procurement \$5,000 and higher in accordance with ABI policy. The Departments shall work with the Procurement Officer to revise any requisition as necessary to procure the goods needed.

100.14 Encumbrance of Funds.

The Procurement Officer shall not issue a solicitation or place an order against a contract or a requisition until the same has been authorized and approved through the ABI approval process, the CFO has certified that there is an unencumbered budget balance to cover the amount of such solicitation or order and the COO and CEO have confirmed that the proper authority has been granted by the ABI Board of Directors.

100.15 Advertising.

- A. All procurement \$50,000 and above shall be posted on the ABI website. Advertisements for construction projects \$50,000 and above shall be published a minimum of one cycle the day that the procurement is released to the public, in a local newspaper and posted on the ABI website. Any procurement for any amount that is governed by the regulations regarding public notice of a specific funding source must follow the regulations of the funding source. The advertisement, newspaper or electronic, required herein shall include a general description of the procurement or assets to be sold, shall state where procurement documents may be secured and the due date/time/place. The Procurement Officer may decide that the newspaper advertisement points interested vendors to ABI's website where details of each solicitation are available to all interested parties.
- B. The President and CEO may elect to make ABI's website its official and primary means of posting solicitations and officially communicating with interested parties as to solicitation opportunities, addenda and other such information. The notice of a solicitation will include public advertisement.
- C. The Procurement Officer shall notify prospective bidders or offerors that have electronically registered with ABI or who have requested to be added to a "Vendors List", in which the Procurement Officer in conjunction with the General Counsel or designee shall maintain. This outreach will occur in addition to public advertisement.

100.16 Informal Procurement Less Than \$50,000.

Any procurement not exceeding the formal and competitive \$50,000 threshold may be made in accordance with small purchase procedures. However, procurement requirements shall not be artificially divided to avoid formal bidding requirements.

- A. All procurement of goods and services of less than \$50,000 may occur in the open market without advertisement and without observing sealed bidding procedures. All procurement of any cost for professional services, construction and construction related services require a detailed scope of work, schedule and budget, insurance and bonding requirements and must meet any other requirements that may apply.

- B. All Informal Procurement shall, whenever possible, be based on three or more competitive quotes and shall be awarded to the lowest responsive and responsible vendor or to the vendor that provides the best value in the interest of ABI relative to the specific procurement. Quotes may be solicited by using an electronic bid system, telephone, email, Internet or other Procurement approved means. The accepted quote must be confirmed in writing. Purchases may also be obtained from cooperative contracts, catalogs or vendor agreements (for example office supplies, small equipment, electronic and technology devices). It is not recommended for ABI staff to make purchases (does not apply to travel) on a personal credit card. If a personal credit card is used for a purchase, the requisition and approval workflow must be completed first. ABI may not be held liable for a purchase on a personal credit card if the purchase was not approved in writing in advance.
1. Purchases \$5,000 up to \$49,999.99, must be submitted to the Procurement Officer with a requisition and signed, written quotes from each vendor (3 preferred), and the approval workflow must be completed *prior* to the purchase. The approval workflow shall include the supervising Department Director; the Procurement Officer; the CFO, the COO, and the President and CEO.
 2. Purchases up to \$2,500.00 may be made at the department Director's discretion, subject to confirmation of funding in the Department's annual budget. The approval workflow shall include the supervising Department Director and the CFO. The approval workflow shall include the President and CEO at \$2,500 and above.

100.17 Ex Parte Communication.

Please note that to insure the proper and fair evaluation of a proposal or bid, ABI prohibits ex parte communication (i.e., unsolicited) initiated by a Bidder or Offeror to an ABI Employee, Consultant, Volunteer, Committee Member, Graduate or Undergraduate Fellow, City of Atlanta Official (i.e. City Aldermen, Mayor, etc.), or any ABI Affiliates, evaluating or considering the proposal or bid prior to the time a selection has been made. Communication includes but is not limited to fax, phone call, email and personal visit. Communication between a Bidder or Offeror and ABI will be directed in writing to the Procurement Officer or designated contact person only. The Procurement Officer or designated contact person will obtain the information or clarification needed. Ex parte communication may be grounds for disqualifying the offending Bidder or Offeror from consideration or award of a bid or proposal and repeat offenders may be disqualified from responding to solicitations for future projects.

1. From the time a procurement is posted including all of the steps leading up to an award, all communication with vendors, bidders, offerors or anyone having interest in a procurement, shall be directed to the Procurement Officer. ABI staff shall not have direct communication with any interested party during the procurement process.
2. All communication related to Real Estate procurement shall be directed to the Director of Real Estate and Asset Management.

100.18 Competitive Sealed Bidding.

- A. *Conditions for Use.* When the estimated annual cumulative costs are estimated at \$50,000 and higher, all requisitions and contracts for goods, services (non-professional) and construction shall, except as specifically provided herein, be based whenever possible, on competitive sealed bids.

- B. *Advertisement:* See 100.15

- C. *Bid Award:* Awards for goods and services shall be awarded by competitive sealed bidding except as otherwise provided herein. The form of the award, whether a formal contract or a simplified contract (i.e. purchase order), shall be at the discretion of the Procurement Officer. The basis of award shall be to the lowest responsive and responsible bidder, unless otherwise stated in the ITB. Other basis of awards may include the responsive and responsible bidder offering the best value or in the best interest of ABI and the basis of award must be stated in the ITB.
- D. *Invitation to Bid (ITB):* Shall be issued and shall include a complete description, schedules and benchmarks, the basis of the award and all contractual terms and conditions applicable to the procurement.
- E. *Bid Opening.* All bids shall be submitted as prescribed by the ITB and may be delivered by postal mail or in person in a sealed envelope. Bids shall be opened publicly in the presence of one or more witnesses by the Procurement Officer or a designated representative at the date, time and location specified in the ITB. Bid tabulations and awards shall be available upon request. Bid tabulations recorded at the bid opening do not indicate the lowest, responsive and responsible bid.
- F. *Bid Acceptance and Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Bids shall be evaluated based on the requirements set forth in the ITB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The ITB shall detail the evaluation criteria to be used. Criteria may not be used in the bid evaluation unless they are stated in the ITB.

In determining the "lowest responsible and responsive bidder", in addition to price, the Procurement Officer shall consider the factors listed in the solicitation document. Additionally the Procurement Officer and the Project Manager shall determine "Responsibility" and "Responsiveness." Responsibility means having the ability to successfully complete the transaction while responsiveness means meeting the requirements mandated by the solicitation document. The factors to be considered in determining responsibility include the ability, capacity or skill of the bidder to perform the contract or provide the service required; whether the bidder can perform the contract or provide the service promptly or within the time specified; the character, integrity, reputation, judgment, experience and efficiency of the bidder; the quality of performance of previous contracts or services; the previous and existing compliance by the bidder with laws and policies relating to the contract or service; the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; the quality, availability of the goods, or contractual services to the particular use required and the ability of the bidder to provide future maintenance and service for the use of the subject to the contract.

- G. *Other Than Low Bid.* When the award is not given to the lowest cost responsive and responsible bidder (typically this would apply to qualification based selection in which consulting services are involved). A complete statement of the reasons for award to another bidder shall be prepared by the Procurement Officer or designee. Concurrence of the COO and/or CEO shall be obtained and

filed with the bid documents.

- H. *Only One Bid in Response to a Solicitation:* In the case where only one bid has been submitted in response to a competitive solicitation, the Procurement Officer shall review the requirements of the bid to determine if the requirements are restrictive or ambiguous, resulting in limited competition. Additionally, efforts shall be made to communicate with eligible vendors of the reason(s) for not responding to the solicitation. The one bid may be accepted and considered or be rejected for reasons other than responsiveness and responsibility of the bid. Consideration and acceptance or modification and negotiation may be acceptable in the case of only one bid received only with authorization from the President and CEO, and regulations of the funding source.
- I. *Correction or Withdrawal of Bids and Cancellation of Awards:* Correction or withdrawal of bids before or after award, or cancellation of awards or contracts based on bid mistakes, shall be permitted in accordance with this policy. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of ABI or fair competition are permitted. Except as otherwise provided by policy, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Procurement Officer. Nothing in this section is intended to prohibit ABI from accepting a voluntary reduction in price from a low bidder after bid opening; provided that such reduction is not conditioned on, or results in, the modification or deletion of any conditions contained in the ITB. Modification may be acceptable in the case of only one bid received with authorization from the President and CEO and regulations of the funding source.
- J. *Award:* The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements set forth in the ITB. The Procurement Officer or designee shall also have the authority to negotiate changes in construction project bid requirements with a low bidder in order to arrive at a price not in excess of available funds, at the request of the CEO. Even where the bids exceed the limitation of 10% on the discretionary authority to negotiate with the low bidder, if circumstances warrant an emergency determination, the procurement can proceed under Section 100.21 (Emergency Procurement) in accordance with procedures. In the event all bids for a construction project exceed available funds as certified by the CFO, and the low responsive and responsible bid does not exceed such funds by more than ten (10) percent, the Procurement Officer is authorized, at the request of the department Director, in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.
- K. The Procurement Officer, after written authorization from the President and CEO, has the authority to reject all bids, parts of all bids, or bids for any one or more goods or contractual services included in the proposed contract.
- L. No contract or requisition shall be subdivided to avoid the threshold requirements of this section.

100.19 Competitive Sealed Proposals (Request for Proposals).

- A. *Conditions for Use:*

1. A contract may be entered into by competitive sealed proposals when the Procurement Officer determines that an ITB is either not practicable or not advantageous to ABI. Policy may provide that it is either not practicable or not advantageous to ABI to procure specified types of supplies, services, or construction by competitive sealed bidding.
 2. Contracts involving public private partnerships for the design-build, design-build-operate-maintain or design-build-finance-operate-maintain project delivery methods specified herein shall be entered into by competitive sealed proposals, except as otherwise provided herein.
- B. *Request for Proposals (RFP):* Proposals shall be solicited through Request for Proposals. Non-construction proposals shall be open for response for a minimum of fifteen (15) business days.
- C. *Advertisement:* See 100.15
- D. *Receipt of Proposals:* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of evaluation (not publically opened and read aloud). A Register of Proposals received shall be prepared and available for public inspection after contract award upon request.
- E. *Evaluation Committee:* The requesting department Director shall convene an evaluation committee to review the proposals. The evaluation committee shall:
1. Consist of three or more members including the department Director or a designee, and the Procurement Officer or a designee. The Procurement Officer or designee is a permanent member of this team and will facilitate the evaluation process in order to maintain the integrity of the RFP, evaluation and award processes. The Procurement Officer will not score or rank proposals;
 2. Develop an evaluation matrix including a uniform scoring system to evaluate each proposal. Other key criteria including vendor presentations and/or interviews shall be developed prior to solicitation being issued and the same are to be used by the evaluation/selection committee to assist in the vendor selection process;
 3. Make a written recommendation to the COO and/or President and CEO as to which proposal represents the best value to ABI, taking into account the price; ability, capacity of skill of the offeror to provide the required services; whether the offeror can provide the service promptly or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the offeror; the quality of the performance of previous contracts or services; the previous and existing compliance by the offeror with laws and policies relating to the service; the ability of the offeror to provide any necessary future service; and the number and scope of conditions attached to the proposal;
 4. Upon receipt of the evaluation committee's recommendation, the department Director shall decide whether to proceed with an award or to abandon efforts to secure the subject services if the proposal does not meet the RFP requirements or the department Director determines the service is no longer necessary, or to solicit new proposals. The department Director shall seek approval of the COO and/or President and CEO to end the procurement

process entirely. Final approval of the recommended vendor and the decision to enter into a contract with the recommended vendor shall remain with the President and CEO.

- F. *Evaluation Factors.* The RFP shall state the relative importance of price and evaluation factors and sub factors, if any.
- G. *Inclusion of Vendors:* Vendors will be selected based on their capability, performance, efficiency, value and the factors described in the RFP solicitation. ABI is committed to the practice of non-discrimination in the selection of team members and relationships with subcontractors for Atlanta vendors with a desire to reflect diversity in the participation of vendors engaged in the Atlanta BeltLine effort. ABI strongly encourages participation by DBE, FBE, SBE and MBE entities in all contracts issued by ABI. ABI anticipates that as a part of a responsive submittal that DBE, FBE and MBE participation will be included by all vendors. There is no set maximum limit on the amount of DBE, FBE or MBE participation for ABI contracts. The minimum goal for participation is 30% for all ABI contracts. In cases where Federal or State funds are included in the procurement, the participation goal of the funding source shall prevail, with a statement that ABI encourages a higher participation percentage. In addition, ABI may include SBE and local preference criteria in solicitations which shall be evaluated in addition to the DBE, FBE or MBE participation reflected in a given response. Please note: While goals may vary depending on the requirements of the funding source, ABI continues to encourage the ABI minimum participation goal.
- H. *Discussion with Responsible Offerors and Revisions to Proposals.* As provided in the RFP, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- I. *Award.* Award shall be made to the responsive and responsible offeror whose proposal conforms to the solicitation and is determined to be the most advantageous to ABI taking into consideration price and the evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. The Procurement Officer shall provide written notice of the award of a contract promptly to all offerors.
- J. *Proposal Award Approval.* The department Director shall provide a recommendation of the award to ABI President and CEO for final approval and contract execution.
- K. The Procurement Officer is authorized to provide debriefings to vendors that furnish the basis for the source selection decision and contract award.

100.20 Sole Source Procurement.

- A. A contract may be awarded for goods, services, or construction-related items without competition when the requesting department and the Procurement Officer determine that there is only one source for the required procurement. Regulations for sole source procurement may vary based on the funding source.
- B. Sole-source procurement may be used only in limited circumstances when there is only one source available to provide the specified goods or services. A requirement for a particular proprietary item does not justify a sole-source purchase if there is more than one potential vendor/distributor for the procurement. The following are circumstances which could necessitate sole-source procurement:
1. Where the compatibility of technology, equipment, accessories, or replacement parts is the paramount consideration;
 2. Where a sole vendor's item is needed for trial use or testing;
 3. Where a sole vendor's item is to be purchased for resale;
 4. Where public utility services are to be purchased, relocated or modified.
 5. Where service must be obtained from the original equipment contractor in order to maintain equipment operation and to maintain services through proprietary software which require license or service level agreements.
 6. To protect the product or service warranty.

The Procurement Officer will specify the application of sole source determinations and the duration of its effectiveness. In cases of reasonable doubt, competition shall be solicited. Any request by a department that a purchase be restricted to one potential contractor shall be accompanied by a written explanation, fair and reasonable pricing, acceptable terms and conditions signed by the department Director acknowledging that no other vendor will be suitable or acceptable to meet the need and approved by the President and CEO.

- C. The Procurement Officer shall conduct negotiations, as appropriate, as to price, delivery, and terms. A purchase order or contract shall be issued and ABI COO and/or President and CEO will approve the final contract terms when a contract is developed by the General Counsel.
- D. A record of sole-source purchases shall be maintained that lists:
1. Each contractor's name;
 2. The amount and type of each requisition or contract;
 3. A listing of the goods or services purchased under each contract;
 4. The purchase order or contract number;
 5. Department requesting the sole-source purchase.

100.21 Emergency Procurement.

- A. *Unforeseen Requirements:* In case of an immediate need which requires immediate purchase of goods or services, ABI President and CEO shall authorize the Procurement Officer to procure by Informal Procurement procedure, as herein mentioned in Section 100.16, at the lowest possible price, any goods or services regardless of the amount of the expenditure; provided, however, that the Chief Financial Officer shall certify that the account to be charged for said purchase has a

sufficient unencumbered balance to pay for the purchase.

- B. A full report of the circumstances of such immediate purchase shall be filed by the Procurement Officer with a copy to the ABI President and CEO, COO , General Counsel and CFO.
- C. The Procurement Officer may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included on the purchase order or the contract.
- D. The Procurement Officer shall administer the procedure under which emergency procurements by department Directors may be made.

100.22 Limited Competition and Special Procurement.

The Procurement Officer may initiate a limited competition or special procurement where it is determined that limited competition and/or a unique situation exists that makes the application of all formal or informal requirements of competitive sealed bidding or competitive sealed proposals contrary to the best interest of ABI. Any limited competition or special procurement under this section shall be made with such competition as is practicable under the circumstances without adhering to normal formal or informal procurement methods. A written determination of the basis for the limited competition or special procurement and for the selection of a particular contractor, consultant or vendor shall be presented by the Procurement Officer to the COO and ABI President and CEO for their approval. This section includes but is not limited to Performance(s), Artwork, Professional Artist(s), Fine Art and/or Cultural Art services, strategic consulting, acquisition or sale of Real Estate, and Surface Transportation Projects involving Public and Private Partnerships (P³) where funding terms do not otherwise dictate the method and procedures for procurement. The Procurement Officer will periodically review exempt goods and services on the NIGP Commodity Code Exempt list utilized by the Georgia State Department of Administration Purchasing Division.

100.23 Architectural and Engineering Services.

- A. *Policy.* It is the policy of ABI to release public notice of all requirements for Architectural and Engineering Services and to negotiate contracts for Architectural and Engineering Services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.
- B. In the procurement of Architectural and Engineering Services, the Procurement Officer or designated representative shall encourage firms to submit a statement of qualifications and performance data. The Procurement Officer or designated representative shall chair the Architect-Engineer Selection Committee for such contracts. The Selection Committee shall evaluate current statements of qualifications and performance data on file with ABI, together with those that may be submitted by other firms regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three firms, when possible, regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the Selection Committee with the firms deemed to be the most highly qualified to provide the services

required.

- C. *Negotiation.* The Procurement Officer in conjunction with the designated representative shall negotiate a contract with the highest qualified firm for Architectural and Engineering Services at compensation which the Procurement Officer and designated representative determine to be fair and reasonable to ABI. Should the Procurement Officer or designated representative be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be formally terminated. The Procurement Officer and the designated representative shall then undertake negotiations with the second most qualified firm. In the case where negotiations fail, the Procurement Officer and the designated representative shall then undertake negotiations with the third most qualified firm. Should the Procurement Officer and the designated representative be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Procurement Officer and the designated representative shall select additional firms in order of their competence and qualifications, and the Procurement Officer and the designated representative shall continue negotiations in accordance with this Section until an agreement is reached. In the case of failure to successfully negotiate with a qualified firm or the responses to the procurement result in a lack of qualified firms, the Procurement Officer may recommend to the President and CEO that the procurement be cancelled. The scope of work shall be reviewed and modified if necessary in order to attract qualified firms and a new solicitation shall be issued.

100.24 Responsiveness and Responsibility of Bidders and Offerors.

- A. A written determination of non-responsibility or non-responsiveness of a bidder or offeror shall be made by the Procurement Officer. The unreasonable failure of a bidder to promptly supply information in connection with an inquiry with respect to responsiveness or responsibility may be grounds for disqualification from participating in the specific procurement.
- B. Confidential information furnished by a bidder or offeror shall not be disclosed outside of the Office of the Procurement Officer without prior written consent by the bidder or offeror except when applicable open records requirements mandate disclosure.
- C. Bidders and Offerors are required to submit bids or proposals no later than the due date and time and must respond to any inquiries within the specified time. Late submissions will not be accepted and will be considered as non-responsive.

100.25 Prequalification of Vendors.

Prospective vendors may be prequalified for particular types of goods, services, and construction. The method of submitting prequalification information and the type of information shall be determined by the Procurement Officer and the designated representative. Prequalification of a vendor shall be valid for two years.

100.26 Substantiation of Offered Prices.

The Procurement Officer may request factual information reasonably available to the bidder or offeror to substantiate that the price or cost offered, or some portion of it is reasonable if the price is not:

- A. Based on adequate price competition;

- B. Based on established catalogue or market prices; or
- C. Set by law or regulation; and
- D. The price or cost exceeds an amount established in the regulations.

100.27 Types of Contracts.

Any type of contract which will promote the best interests of ABI may be used. However the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to ABI than any other type or that it is impracticable to obtain the goods, services, or construction required except under such a contract.

100.28 Cost Principles.

The CFO shall establish cost principles to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions.

100.29 Multi-Year Contracts.

- A. *Specified Period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time, not exceeding five (5) years deemed to be in the best interest of ABI, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. An example would be an initial contract term of two (2) years with three (3) one-year renewals. Payment and performance obligations for succeeding renewals and fiscal periods shall be subject to the availability and appropriation of funds for each year of the term of the contract.
- B. *Use.* A multi-year contract is authorized where:
 - 1. Estimated requirements or scope of work covers the term of the contract and are reasonably firm and continuing; and
 - 2. Such a contract will serve the best interest of ABI by encouraging effective competition or otherwise promoting efficiency in ABI productivity.
- C. *Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods:* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. ABI shall provide no less than a thirty-day (30) notice to the contractor. The cost of cancellation may be paid from any appropriations available for such purposes.

100.30 Right to Audit Records and Inspection of Place of Business:

- A. *Right to Audit Records:* Throughout the term of a contract, ABI reserves the right to audit cost or pricing data, audit the books and records of the contractor and any subcontractors.

- B. *Right to Inspect Place of Business.* ABI may, at reasonable times, inspect the place of business in whole or in part, of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by ABI.

100.31 Determinations, Reports and Retention.

- A. *Finality of Determinations.* The determinations required by the Competitive Sealed Bidding, Correction or Withdrawal of Bids, Cancellation of Awards, Competitive Sealed Proposals, Conditions for Use, Competitive Sealed Proposals, Award, Sole Source Procurement, Emergency Procurement, Special Procurement, Responsibility of Bidders and Offerors, Determination of Non-responsibility, Determination of Non-Responsiveness, Substantiation of Offered Prices, Types of Contracts, Approval of Accounting System, Multi-Year Contracts, Use and Choice of Project Delivery Methods sections are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.
- B. *Retention of Procurement Records.* All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by ABI. All retained documents shall be made available to ABI or a designee upon request and proper receipt therefor.
- C. *Record of Procurement Actions Taken Under Sole Source Procurement, Emergency Procurement, and Special Procurement.*
1. *Contents of Record.* The Procurement Officer shall maintain a record listing all contracts made under Sole Source Procurement, Emergency Procurement, or Special Procurement for a minimum of five years. A copy of the record shall be submitted upon request to ABI. Such record may also be available for public inspection. The record shall contain:
 - a. Each contractor's name;
 - b. The amount and type of each contract; and
 - c. A listing of the supplies, services, or construction procured under each contract.
 2. *Public Access to Records.* Procurement records shall be a public record to the extent provided in O.C.G.A 50-18-70.

100.32 Contract Administration.

Project Managers are the primary administrators of the contract assigned to the project. The Procurement Officer may establish guidelines and conduct contract administration functions as deemed necessary to effectively management the procurement function. Among the responsibilities and functions that the Procurement Officer may provide guidance and oversight of are:

- A. Debriefing of Bidders;
- B. Start-Up or Post-Award Conferences with the Successful Vendor;
- C. Monitoring of Contract Compliance and Progress;
- D. Preparation of the Notice to Cure;
- E. Debarment or Suspension of Contractors/Vendors due to poor performance and/or nonperformance.

100.33 Reporting of Anticompetitive Practices.

When at any time collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be documented by the Procurement Officer or designated

representative. The Procurement Officer's recommendation to debar or suspend the bidder or offeror shall be reviewed by the COO and the General Counsel. The final determination and notice to debar or suspend the bidder or offeror shall be issued by the President and CEO.

100.34 Specification Preparation.

- A. *Procedures for Specification Preparation:* The requesting department staff shall develop specifications. The Procurement Officer will assist in researching specification examples and ABI staff may seek expert advice or assistance in the development of specifications for unfamiliar procurement needs.
- B. *Duties of the Procurement Officer:* The Procurement Officer shall monitor the use of specifications for goods, services, and construction required by ABI to ensure specifications are up-to-date and not proprietary of a specific brand or vendor.
- C. *Maximum Practicable Competition.* All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying ABI's needs, and shall not be unduly restrictive.
- D. *Specifications Prepared by Other Than ABI Personnel.* The provisions of this article regarding the purposes and non-restrictiveness of specifications shall apply to all specifications prepared other than by ABI personnel, including, but not limited to, those prepared by architects, engineers, and designers.

100.35 Procurement of Design and Construction Services Definitions.

Architectural and Engineering Services means:

1. Professional services of an architectural, landscape architecture, planning or engineering nature, as defined by State or Federal law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this Subsection;
2. Professional services of an architectural, landscape architecture, planning or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
3. Such other professional services of an architectural, landscape architecture, planning or engineering nature, or incidental services, which members of the architectural, landscape architecture, planning and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Design-bid-build is the traditional delivery method for construction projects where design and construction are sequential and contracted for separately with two contracts.

Design-build is a project for which the design and construction services are provided to ABI under

one contract.

Design-build-finance-operate-maintain is a project delivery method in which ABI enters into a single contract for design, construction, finance, maintenance, and operation of a facility over a contractually defined period.

Design-build-operate-maintain is a project delivery method in which ABI enters into a single contract for design, construction, maintenance, and operation of a facility over a contractually defined period.

Design requirements are the written description of the facility or service to be procured under this Article, including:

1. Required features, functions, characteristics, qualities, and properties that are required by ABI;
2. The anticipated schedule, including start, duration, and completion; and
3. Estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance.
4. The design requirements may, but need not, include drawings, plans, studies, specifications, reports and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project.

Independent Peer Reviewer Services are additional architectural, landscape architecture, planning and engineering services provided to ABI in design-build-operate-maintain or design-build-finance-operate-maintain procurements. The function of the independent peer reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the contractor are in conformance with the applicable standard of care.

Operations and Maintenance: A project delivery method whereby the Department enters into a single contract for the routine operation, routine repair, and routine maintenance of a facility.

Proposal development documents: Drawings and other design related documents that are sufficient to fix and describe the size and character of a facility as to environmental, architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

100.36 Project Delivery Methods.

- A. The following project delivery methods are authorized for procurements relating to facilities and services within the contracting authority of ABI:
 1. Design-bid-build (including construction management at-risk);
 2. Operations and maintenance;
 3. Design-build;
 4. Design-build-operate-maintain; and
 5. Design-build-finance-operate-maintain.
- B. Participation in a report or study that is subsequently used in the preparation of design requirements for a project shall not disqualify a firm from participating as a member of a

proposing team in a design-build, design-build-operate-maintain, or design-build-finance-operate-maintain procurement unless such participation would provide the firm with a substantial competitive advantage, and the procurement for services does not specifically exclude participation in the project.

100.37 Source Selection Methods Assigned to Project Delivery Methods.

This section specifies the source selection methods applicable to procurements for the project delivery methods identified in Section 100.36, except as provided in Sections 100.16 Informal Procurement; 100.20 Sole Source Procurement; 100.21 Emergency Procurement; and 100.22 Limited Competition and Special Procurement.

A. *Design-bid-build.*

1. The Request for Statement of Qualifications (RFQ) process shall be used to procure architectural and engineering services for design-bid-build projects.
2. Competitive sealed bidding shall be used to procure construction for design-bid-build projects, unless the Procurement Officer determines in writing that the use of competitive sealed proposals is in the best interest of ABI, or the President and CEO provides documentation of another approach or option within the law of the funding source(s).

B. Contracts for operations and maintenance shall be procured under ITB, Multi-Step Bids, or RFP procedures.

C. Contracts for design-build shall be procured by competitive sealed proposals except that the regulations may describe the circumstances under which particular design-build procurements will not require the submission of proposal development documents as required herein.

D. Contracts for design-build-operate-maintain shall be procured by competitive sealed proposals.

E. Contracts for design-build-finance-operate-maintain shall be procured by competitive sealed proposals.

100.38 Additional Procedures Applicable to Procurement of Certain Project Delivery Methods.

A. In addition to the requirements of Competitive Sealed Proposals, the procedures in this section shall apply to procurements for design-build, design-build-operate-maintain and design-build-finance-operate-maintain.

B. Each RFP for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain:

1. Shall include design requirements;
2. Shall solicit proposal development documents; and
3. May, when the COO and/or President and CEO determines that the costs of preparing proposals is a deterrent in view of the size, estimated price, and complexity of the procurement:

- a. Prequalify offerors by issuing RFQ in advance of the RFP; and
 - b. Select a short list of responsible offerors prior to discussions provided that proposals are to be short-listed is stated in the RFP and prompt notice is given to all offerors as to which proposals have been short-listed.
- C. Evaluation Factors: Each Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain:
1. Shall state the relative importance of
 - a. Demonstrated compliance with the design requirements;
 - b. Offeror qualifications;
 - c. Financial capacity;
 - d. Project schedule;
 - e. Price (or life-cycle price for design-build-operate-maintain and design-build-finance-operate-maintain procurements); and
 - f. Other factors, if any; and
 2. May require each offeror, when the contract price is estimated to exceed \$5,000,000 or when the contract period of operations and maintenance is five (5) years or longer, to identify an Independent Peer Reviewer whose competence and qualifications to provide such services shall be an additional evaluation factor in the award of the contract.
- D. Procurement of Materials and Equipment under Competitively Bid Construction Projects.
1. The Procurement Officer shall have the authority, with respect to ABI construction projects which have been competitively bid, to procure materials and equipment solely upon the recommendation of the construction manager or of the contractor or subcontractor by whom the materials or equipment are to be used.

100.39 Other Requirements for Construction Contracting.

The term “responsible bidder” shall be further restricted to include, except as to federal or state projects if prohibited as a condition of funding, only those bidders who certify by signed statement that:

- A. They have not been barred from bidding on any federal or state projects within the last year;
- B. They have not had any City of Atlanta, Invest Atlanta or Fulton County issued business, trade or contracting license suspended or revoked within the last year;
- C. They have and enforce a drug-testing policy for all employees in the field;
- D. All employees will be licensed with the appropriate licensing authority;
- E. Prevailing wages will be paid to all employees when applicable;
- F. All employees and employee supervisors will be OSHA-certified in compliance with then-current OSHA safety requirements prior to working on the project;
- G. Will comply with all applicable laws, policies, rules and regulations governing the conduct of business with ABI and the State of Georgia.
- H. The contractor is in compliance with S.A.F.E. and E-Verify requirements.

100.40 Bonds, Insurance, Guarantees.

A. *Bid Security.*

1. Bid security is required for all competitive sealed bidding and competitive proposals for construction contracts which applies to project delivery methods when the price is estimated by the Department to exceed \$1,000,000. Bid security shall be a bond provided by a surety company authorized to do business in this state, or the equivalent in cash, or otherwise supplied in a form satisfactory to ABI. Nothing herein prevents the requirement of such bonds on such contracts under \$1,000,000 when the circumstances warrant.
2. Bid security shall be equal to at least 5% of the bid amount.
3. When the Invitation for Bids require security, the bid shall be rejected if security requirements are not met.
4. After bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids. If a bidder is permitted to withdraw its bid (or proposal) before award, or is excluded from the competition before award, no action shall be had against the bidder or the bid security.
5. Bid deposits shall be stated in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety or deposit. A successful bidder shall forfeit any surety if the bidder fails to enter into a contract within ten days after receipt of the ABI contract for bidder signature.

B. *Contract Performance and Payment Bonds.*

1. When a construction, design-build, design-build-operate-maintain, or design-build-finance-operate-maintain contract is awarded in excess of \$100,000, the following bonds or security shall be delivered to ABI and shall become binding on the parties upon the execution of the contract;
2. A performance bond satisfactory to ABI, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to ABI, in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance; and
3. A payment bond satisfactory to ABI, executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to ABI, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance.

C. *Reduction of Bond Amounts.* The General Counsel may reduce the amount of performance and payment bonds to 50% of the normal amounts established herein upon a written determination of the need to do such. Reduction of a performance or payment bond amount below the threshold shall be authorized and approved in writing by the President and CEO.

D. *Authority to Require Additional Bonds.* Nothing in this Section shall be construed to limit the authority of ABI to require a performance bond or other security in addition to such bonds, or in circumstances other than specified herein.

- E. *Form of Bonds.* The General Counsel may specify the form of bonds (such as AIA bond format) and require that all bonds be in such format. Additionally the General Counsel may establish a procedure for the acceptability of bonds that do not comply with the specified format.

100.41 Other Forms of Security.

The Procurement Officer may require RFP's to include one or more of the following forms of security to assure the timely, faithful, and uninterrupted provision of operations and maintenance services procured separately, or as one element of design-build-operate-maintain or design-build-finance-operate-maintain services:

- A. Operations period surety bonds that secure the performance of the contractor's operations and maintenance obligations under the project delivery methods set forth herein.
- B. Appropriate written guarantees from the contractor (or depending upon the circumstances, from parent corporations) to secure the recovery of re-procurement costs to ABI in the event of a default in performance by the contractor.

100.42 Construction Contract Clauses and Their Administration.

- A. ABI construction contracts (includes project delivery contracts) shall contain clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:
1. The unilateral right of ABI to order in writing:
 - a. Changes in the work within the scope of the contract; and
 - b. Changes in the time of performance of the contract that do not alter the scope of the contracted work.
 2. Variations occurring between estimated quantities of work in a contract and actual quantities.
 3. Suspension of work ordered by ABI. The ABI Project Manager after consultation with the Procurement Officer may issue a written suspension notice to resolve issues such as safety concerns or poor workmanship. If the suspension is necessary to cure a contractor's default, the contractor is not entitled to damages and remains obligated to complete the project on time. The contractor may be entitled to compensation for damages if the suspension is the fault of ABI or the A/E.
 4. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses recommended by the ABI Project Manager need not be included in a contract when the:
 - a. Contract is negotiated;
 - b. Contractor provides the site or design; or
 - c. Parties have otherwise agreed with respect to the risks of differing site conditions.
- B. *Price Adjustments.* Adjustments in price pursuant to changes shall be computed in one or more of the following ways:

1. by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
2. by unit prices specified in the contract or subsequently agreed upon;
3. by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
4. in such other manner as the contracting parties may mutually agree; or
5. in the absence of agreement by the parties, by a unilateral determination by ABI of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by ABI in accordance to the provisions of Legal and Contractual Remedies.

C. *Additional Contract Clauses.* Construction contracts shall have clauses providing for appropriate remedies and covering the following subjects:

1. Liquidated damages as appropriate;
2. Specified excuses for delay or nonperformance;
3. Termination of the contract for default; and
4. Termination of the contract in whole or in part for the convenience of ABI. Termination for convenience is a controlled contract breach that is specific to government-funded contracts. Termination for convenience may only occur if the requirement is no longer needed or funding is no longer available. In any event, the contractor is entitled to compensation for all work completed prior to termination, including purchased materials and may be entitled to additional damages resulting from the termination.

D. *Modifications of Required Clauses.* The President and CEO may vary the clauses under subsections A. and C., included in any particular ABI construction contract provided that notice of any such material variation is stated in the ITB or RFP. Any recommended changes of the Procurement Officer shall be reviewed and approved by the COO prior to submission for approval of the President and CEO.

E. *Fiscal Responsibility.* Every contract modification, change order, or contract price adjustment under a construction contract with ABI shall be subject to prior written certification by the CFO or other official designee responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the CFO or other responsible official designee discloses a resulting increase in the total project budget and/or the total contract budget, ABI shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration;

100.43 Legal and Contractual Remedies.

A. *Right to Protest:* Any bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Procurement Officer. The protest shall be submitted in writing within five (5) business days after such aggrieved person has been notified of a contract award.

- B. *Authority to resolve Protests:* The Procurement Officer shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.
- C. *Decision:* If the protest is not resolved by mutual agreement, the Procurement Officer shall promptly issue a decision in writing to the protestant with a copy to the COO. The decision shall:
1. List the name of the party or entity involved;
 2. State the facts surrounding the protest;
 3. State the basis for the action taken by the Procurement Officer;
 4. Summarize the recommendation included in the decision and provide a copy of the decision immediately to the protestant and any other party intervening;
 5. Inform the protestant of their right to appeal the decision issued by the Procurement Officer., the General Counsel will inform the protestant of the right to appeal to the President and CEO.
- D. *Appeal of Protest:* If a protestant shall appeal the decision issued by the Procurement Officer, the General Counsel shall review the protest and the decision to determine the final and conclusive outcome, including further attempts to resolve the protest:
1. Once a final decision on the appeal has been made, a copy of the opinion from the appeal shall be provided immediately to the protestant and any other party intervening;
 2. The General Counsel shall advise and obtain approval from the President and CEO of the final determination before it is issued.
 3. The decision of the President and CEO is final and concludes the protest.
 4. The General Counsel may recommend a form of alternative dispute resolution if the protestant continues to dispute the final decision of ABI.
- E. *Stay of Procurement During Protests:* In the event of a timely protest (within two business days of the announcement of the Procurement Officer's decision) ABI shall proceed with the solicitation or with the award of a contract if at the direction of the President and CEO, the award of the contract without delay is necessary to protect substantial interests of ABI.

100.44 Authority to Debar or Suspend.

- A. After reasonable notice to the vendor involved and reasonable opportunity for that person to respond, the President and CEO shall have authority to debar a person or entity for cause from consideration for award of contracts.
1. A suspension shall be up to but not longer than three (3) years. The Procurement Officer in conjunction with the ABI Project Manager or the Department Director has the authority to recommend suspension of a vendor from participating in ABI procurement activities if there is probable cause.
 2. Debarment may be permanent or for an indefinite period but not less than three (3) years. The authority to debar or suspend shall be exercised in accordance with this policy.
- B. *Causes for debarment or suspension:*
1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract

or subcontract;

2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a ABI contractor;
3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
4. Violation of contract provisions, as set forth below, of a character which is regarded by the Procurement Officer to be so serious as to justify debarment action:
 - a. Deliberate failure (breach) without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A written record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - c. Falsifying or misrepresenting manufacturer's specifications in order to appear responsive to a solicitation.
 - d. Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of ABI who exercises any "official responsibility" for a procurement transaction. It is not necessary that the offer be accepted by the employee, or that the offer is made with intent to influence the employee in an official act. Extending to any ABI employee exercising official responsibility for a procurement transaction any discount or privilege not available to all ABI employees is considered to be offering an advantage.
 - e. A determination by Ethics Officer/ABI General Counsel that a vendor or contractor has used abusive or obscene language or a threatening manner toward any ABI employee during the performance of their duties or as a result of the performance their duties.
 - f. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the vendor or contractor in a contract or other procurement transaction by ABI.
 - g. Stating an unwillingness or inability to honor a binding bid or proposal. A mere request to withdraw a bid or proposal, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.
 - h. Sale of goods or services to ABI when such sale is prohibited by any debarment then in effect.
 - i. Failure to pay re-procurement costs pursuant to a contract termination for default.
5. Any other cause that ABI determines to be so serious and compelling as to affect responsibility as an ABI contractor, including debarment by a public or private entity for any cause listed in this policy; and
6. Violation of the ethical standards set forth in the ABI Ethics Policy.

C. The Procurement Officer shall issue a written justification to the COO and ABI General Counsel

recommending to debar or suspend a vendor. The decision must be approved by the President and CEO and is final and conclusive. The decision shall:

1. State the reasons for the action taken; and
2. Inform the debarred or suspended vendor involved of any reinstatement conditions.

D. A copy of the decision shall be furnished immediately to the debarred or suspended vendor and any other party intervening.

100.45 Cooperative Procurement.

Cooperative Procurement:

- A. The action taken when two or more entities combine their requirements to obtain advantages of volume purchases including administrative savings and other benefits, when the best interests of ABI would be served.
- B. A variety of arrangements whereby two or more ABI partners purchase from the same vendor or multiple vendors using a single ITB or RFP.
- C. *Procurement Unit* means the local, state or federal government procurement unit, private procurement unit (external), and any not-for-profit entity.

Cooperative procurement is the combining of requirements of two or more public procurement entities to leverage the benefits of volume purchases, delivery and supply chain advantages, best practices and the reduction of administrative time and expenses.

- A. Any Public Procurement Unit may participate in, sponsor, conduct, or administer a Cooperative Procurement agreement for the procurement of any goods, services, or construction with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such Cooperative Procurement may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended Public Procurement Unit contracts that are made available to other Public Procurement Units and Nonprofit organizations.
- B. All Cooperative Procurement conducted under this Article shall be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Source Selection of this policy.

100.46 Small and Disadvantaged Businesses/Supplier Diversity.

- A. The ABI General Counsel shall administer and enforce the ABI Disadvantaged Business Enterprise policy.

100.47 Surplus and Supply Management.

The Procurement Officer shall establish procedures for the management of supplies/goods during their entire life cycle and the sale, transfer, lease, trade-in, donation, disposal of surplus goods by public/private auction, competitive sealed bidding, electronic auction (eAuction), or other appropriate methods designated by procedure. ABI employees of the owning or disposing department shall not be entitled to purchase or otherwise obtain any such goods.

Process Summary Chart:

The Process Summary Chart below highlights the minimum requirements by each dollar threshold of the ABI procurement process. There are three threshold levels:

1. Small purchases are defined as all purchases up to \$5,000;
2. Three written informal quotes from vendors must be obtained for all purchases between \$5,000.01 to \$49,999.99;
3. The formal procurement process method for Requests for Proposals (RFP), Requests for Qualifications (RFQ) or Invitations to Bid (ITB) is required for all purchases \$50,000 and above.

Required Action & Estimated Process Time*	Small Purchases/Informal Quotes	Formal Quotes Requires Vendor Signature	Formal Procurement RFP/RFQ or ITB
	\$.01-\$4,999.99 1-3 days	\$5,000-\$49,999.99 2-10 days	\$50,000 & above 45-90 days
Complete Request to Procure Form <i>Includes general scope, confirmed funding amount, source and timing</i>	X Attach quote form with 3 quotes	X Attach 3 written signed quotes from vendors	X
Complete Detailed Scope of Work/Specification	X	X	X
Prepare RFP/RFQ/ITB			X
Forward Scope/Specification to Procurement Officer		X	X
Advertise RFP/RFQ/ITB in Newspaper			X
Form Selection/Evaluation Team			X
Complete Selection/Evaluation Matrix <i>Each team member completes individual matrix</i>			X
Procurement Officer issues award and non-award letters			X
Contract negotiations and development. Debriefing unsuccessful vendors is scheduled by the Procurement Officer <i>after</i> a contract has been fully executed.	ABI credit card or approved vendor invoice	X	X Requires Invest Atlanta approval for TAD funding

*Every step in the procurement process is not included in this process summary.

Sufficient time must be allowed to properly procure services, equipment or goods. Timing will depend on the size and complexity of the service or goods. Additional timing is required for procurement \$50,000 and above due to publication, pre/post selection meetings, etc.