



POLICY: UNSOLICITED PROPOSALS

ISSUING DEPARTMENT: CHIEF EXECUTIVE

EFFECTIVE DATE: February 9, 2016

Approved:

Susan Black
Interim CEO

BACKGROUND

This Policy clarifies and supplements the Authority's rules contained in Administrative Rule 4.18 pertaining to unsolicited proposals (the "UP Rule") and amends and restates the Unsolicited Proposal Policy effective June 15, 2015.

AUTHORITY

Authority for the establishment of this Policy is Section 2.6 of Administrative Rule 2.

POLICY

4.7 Cone of Silence. Section 4.7 of the LYNX Administrative Rules imposes a cone of silence on "each Solicitation over \$50,000.00 in value from the date of advertisement to the date of award." Section 4.7 shows a clear intent by the Governing Board to limit interactions that could give one vendor an unfair advantage over any other vendors. In a traditional procurement, the advertisement of the procurement marks the beginning of the procurement process as it relates to third-parties, which is why Section 4.7 imposes a cone of silence at that point. However, in the case of an unsolicited proposal, the procurement process, as it relates to third-parties, commences as soon as LYNX receives an unsolicited proposal. Thus, the advertisement contemplated in Section 4.18.5 of the UP Rule, notifying the public that LYNX has received an unsolicited proposal and that it is soliciting additional unsolicited proposals or comments from interested parties (the "UP Advertisement"), is not the same as the advertisement contemplated by Section 4.7 of the LYNX Administrative Rules. Therefore, in order to give effect to the underlying intent of Section 4.7, it is necessary for a cone of silence to be imposed as soon as LYNX receives an unsolicited proposal. As a result, and effective for any unsolicited proposals received after the date hereof, and having a value in excess of \$50,000.00, a cone of silence shall be imposed as soon as the unsolicited proposal is first delivered to LYNX, regardless of whether such unsolicited proposal is complete or incomplete. Such cone of silence shall apply to those persons identified in Section 4.7.1 of the LYNX Administrative Rules. However, in order to facilitate the unsolicited proposal process, the cone of silence shall **not** extend to interactions with the LYNX Chief Executive Officer, Director of Procurement or such other persons ("Other Designated Staff Members") that LYNX specifically identifies in writing for purposes of

interacting with proposers or other interested parties. LYNX may identify such Other Designated Staff Members in the UP Advertisement, on the LYNX website or by such other means as determined by LYNX.

4.18.1 Definition of Unsolicited Proposal. The initial unsolicited proposal and all proposals received in response to the UP Advertisement are “unsolicited proposals” for purposes of the UP Rule. However, to the extent that LYNX receives any additional unsolicited proposals in response to the UP Advertisement, the receipt of such additional unsolicited proposals shall not restart the unsolicited proposal procedures. For example, if LYNX receives a second unsolicited proposal in response to the UP Advertisement, LYNX shall not be required to publish any additional UP Advertisements or to make any determinations as to the uniqueness of the second unsolicited proposal.

4.18.3 Applicability of Public Records Act. The forms of Invitation for Bid (“IFB”) and Request for Proposals (“RFP”) that LYNX utilizes for procurements subject to competitive solicitation contain provisions that provide that if a bidder or proposer asserts that information contained in its bid or proposal is a trade secret, and if LYNX declines to satisfy a public records request in reliance upon such assertion, the bidder or proposer will indemnify and hold LYNX harmless from any liabilities, damages, losses, costs and expenses, including attorney’s fees, that LYNX may incur as a result of such refusal, if such refusal is wrongful. In the unsolicited proposal context, there is no IFB or RFP being issued containing such provisions; however, it is no less important that LYNX avoid expending public funds based upon improper trade secret assertions. Therefore, LYNX reserves the right to reject any unsolicited proposal if the proposer fails to deliver a written undertaking upon request by LYNX agreeing to indemnify LYNX in accordance with the terms set forth herein.

4.18.4.C. Evaluation Fee. Section 4.18.4.C.1. of the UP Rule requires that an initial evaluation fee (the “Evaluation Fee”) of Twenty Five Thousand Dollars (\$25,000) payable to the Central Florida Regional Transportation Authority, d/b/a LYNX accompany each unsolicited proposal, subject to waiver in whole or in part by the Chief Executive Officer. Any waiver of the Evaluation Fee requirement must be in writing. As indicated in Section 4.18.4.C.3 of the UP Rule, the Chief Executive Officer also has the ability to increase the Evaluation Fee in the event that the Chief Executive Officer determines that it is not sufficient to pay LYNX’s costs of evaluating the unsolicited proposal. The Evaluation Fee is primarily intended to be utilized by LYNX for purposes of the comprehensive analysis described in Section 4.18.5.B. of the UP Rule; however, it may also be used by LYNX for other aspects of the unsolicited proposal process, including developing and posting the UP Advertisement. Any proposer submitting an unsolicited proposal in response to the UP Advertisement must also pay an Evaluation Fee in the same amount as the initial proposer so that LYNX will have the resources available to thoroughly review its proposal. LYNX will separately account for expenses incurred for each unsolicited proposal that it receives and charge those expenses against the associated Evaluation Fee. To the extent that the nature of a particular expense makes it impractical for LYNX to separately account for such expense, as determined by LYNX, LYNX may allocate such expense among multiple proposals as it determines reasonable and appropriate in its sole and absolute discretion.

4.18.5.A. Receipt of Unsolicited Proposal, Advertising and Processing of Related Unsolicited Proposals.

(a) The sixty (60) day time period referenced in the first sentence of Section 4.18.5.A. of the UP Rule shall commence once LYNX receives a complete unsolicited proposal that includes the Evaluation Fee. If LYNX receives an incomplete unsolicited proposal or an unsolicited proposal that does not include the Evaluation Fee (which, for the avoidance of doubt, also constitutes an “incomplete unsolicited proposal”), LYNX may, in its sole and absolute discretion, either reject and return the incomplete unsolicited proposal to the proposer or permit the proposer to supplement its incomplete unsolicited proposal (with the presumption that following such supplement, the incomplete unsolicited proposal will become a complete unsolicited proposal). To the extent that the Chief Executive Officer fails to make the determinations required by Section 4.18.5.A. of the UP Rule within the sixty (60) day period referenced therein, the Chief Executive Officer may either seek an extension of time from the proposer to make such determinations or else terminate the unsolicited proposal process. Failure to obtain an extension of time from the proposer will cause the Chief Executive Officer to terminate the procurement process. Following termination, any unused portion of the Evaluation Fee shall be returned to the proposer.

(b) The advertising requirements set forth in Section 4.18.5.A. of the UP Rule are in addition to any other advertising requirements imposed by applicable law or regulation (including Federal Transit Administration (“FTA”) regulations, to the extent applicable). LYNX staff should consider the advertising requirements contained in Section 287.05712(4), Fla. Stat. (the “P3 Requirements”), to the extent that an unsolicited proposal relates to a public private partnership subject to such requirements. Nothing herein is intended to impose any requirements (including the P3 Requirements) upon LYNX other than those required by applicable law or regulation.

(c) The initial processing of any related unsolicited proposals that are received pursuant to the UP Advertisement consists of evaluating whether those additional unsolicited proposals are complete (including whether the Evaluation Fee is included) and whether they comply with the requirements contained in (1) – (4) of Section 4.18.5.A. of the UP Rule. LYNX reserves the absolute right in its sole and absolute discretion to waive any informalities or irregularities that LYNX determines in its sole and absolute discretion to not be material or to reject any incomplete unsolicited proposal or any unsolicited proposal that fails to comply with the aforementioned requirements.

4.18.5.B. Comprehensive Evaluation. After the public notification period referenced in Section 4.18.5.A. of the UP Rule expires, and if LYNX receives multiple unsolicited proposals, the Chief Executive Officer will convene or cause to be convened a Source Evaluation Committee (“SEC”) to evaluate the unsolicited proposals received. The SEC will rank the unsolicited proposals received in order of preference. In ranking the proposals, the SEC will consider such factors, and the relative weights assigned to such factors, designated by the Chief Executive Officer, including the factors contained in Section 4.18.5.B of the UP Rule. The SEC will govern itself in accordance with Florida’s Government in the Sunshine Law, Section 286.011, Fla. Stat. LYNX may, in its sole and absolute discretion, create a short-list of proposers based

upon an initial round of evaluations and permit such selected proposers to undertake a proof of concept or pilot, and ultimately select a proposer based upon the results of such proof of concept or pilot (alternatively, LYNX may, in its sole and absolute discretion, permit all proposers to undertake a proof of concept or pilot). Failure to participate in such proof of concept or pilot will result in rejection of a proposer's proposal.

4.18.5. Contract Negotiation. If LYNX receives multiple unsolicited proposals, LYNX may begin negotiations with the highest-ranked proposer following the posting of the intention to award a contract referenced in Section 4.18.6 of the UP Rule (the "Recommendation of Award"). If LYNX is not satisfied with the results of the negotiations, LYNX may terminate negotiations with the highest-ranked proposer and negotiate with the second-ranked or subsequent ranked proposers, in the order ranked by the SEC. If only one unsolicited proposal is received, LYNX may negotiate with the proposer, and if LYNX is not satisfied with the results of the negotiations, LYNX may terminate negotiations with the proposer. LYNX may, in its sole and absolute discretion, reject all unsolicited proposals at any point in the process until a contract with a proposer is executed. If federal funds are to be utilized by LYNX, in whole or in part, to pay for any goods or services provided under a contract resulting from the unsolicited procurement process, the contract will contain the LYNX General Provisions (which is available at www.golynx.com) to the extent that LYNX determines necessary to comply with FTA requirements. LYNX also may require that a proposer (either prior to or following contract award) sign and deliver certifications regarding debarment, lobbying, disadvantaged business enterprise (DBE) participation, and such other certifications as may be required by applicable law or regulation.

4.18.6.B. Publication of Intention to Award Contract. The publication of the Recommendation of Award shall be undertaken in accordance with LYNX's standard procedures for publication of the intention to award a contract in a competitive solicitation.

4.18.7. Rejection of Proposal. The reasons for rejection identified in Section 4.18.7 of the UP Rule are intended to apply to the Chief Executive Officer's initial review of an unsolicited proposal. However, the reasons for rejection set forth in Section 4.18.7 are not exclusive and LYNX reserves the right to reject any unsolicited proposals if such unsolicited proposals (or the conduct of the proposers of such unsolicited proposals) fail to comply with the terms set forth in the UP Rule, the other LYNX Administrative Rules, this Policy or the UP Advertisement. In addition, LYNX reserves the right in its sole and absolute discretion to terminate the unsolicited proposal process at any time in accordance with the LYNX Administrative Rules, including Section 4.2.4.D. thereof.

4.18.8 Protests. In the event any proposer wishes to file a protest regarding the unsolicited proposal process, such protest must be made in accordance with LYNX Administrative Rule 6 (which is available at www.golynx.com). In the event a protest is filed, LYNX Administrative Rule 6 requires that a cash bond be posted with LYNX at the time the protest is filed. In addition, a protest must meet strict time limitations for filing. Reference is made to LYNX Administrative Rule 6 for these and other matters relating to any protest.

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