

**Erie County Industrial Development Agency (“ECIDA”), Buffalo and Erie County Regional Development Corporation (“RDC”), Buffalo and Erie County Industrial Land Development Corporation (“ILDC”)**

**PROCUREMENT POLICY**

**A. Introduction**

1. Applicability – This Procurement Policy (“Policy”) shall apply to the Erie County Industrial Development Agency (“ECIDA”) and its affiliated corporations: Buffalo and Erie County Regional Development Corporation (“RDC”), Buffalo and Erie County Industrial Land Development Corporation (“ILDC”) and any other affiliated entities that may be established by the ECIDA (hereinafter collectively referred to as the “Agency”) upon approval by the respective Board of Directors or Members of the Agency.
2. Scope – In accordance with Article 18-A of the General Municipal Law (the “GML”), Section 104-b of the GML, and the Public Authorities Accountability Act of 2005, the Agency is required to adopt procurement policies which will apply to the procurement of goods and services paid for by the Agency for its own use and account.
3. Purpose – Pursuant to Section 104-b of the GML, the primary objectives of this Policy are to assure the prudent and economical use of public monies in the best interests of the taxpayers of the County of Erie, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances and to guard against favoritism, improvidence, extravagance, fraud and corruption.

**B. Procedures**

1. Solicitation Procedures for the Purchase of Commodities, Equipment, Goods or Services.
  - a. Up to \$5,000 per instance – The discretion of the Chairperson or chief executive officer of the Agency or authorized designee.
  - b. Greater than \$5,000 to \$20,000 per instance – Documented verbal quotations or written/fax/email quotations from at least three vendors.
  - c. Greater than \$20,000 per instance – Written Request for Proposal.
  - d. Notwithstanding the foregoing, should cumulative procurements pursuant to paragraphs a or b above exceed \$50,000 per calendar year for a single vendor, the Agency shall be required to prepare a Written Request for Proposal for such procurements.

2. Exceptions. Alternative proposals or quotations shall not be required for procurements made through or with respect to:
  - a. New York State or Erie County Contracts – when the Agency is able to procure commodities, equipment, goods or services through New York State or Erie County contracts, it is unnecessary to obtain quotations or bids;
  - b. State Finance Law Section 175-b (from agencies for the blind or severely handicapped);
  - c. Correction Law Section 186 (articles manufactured in correctional institutions);
  - d. Emergency Procurements – an emergency exists if the delay caused by soliciting quotes would endanger health, welfare, property or an economic development opportunity. Approval of the Chief Executive Officer is necessary, which shall be documented and shall also include a description of the facts giving rise to the emergency.
  - e. Sole Source Procurements – A “sole source” means a situation where (i) there is only one possible source from which to produce goods and/or services available in the marketplace, (ii) no other goods and/or services provide substantially equivalent or similar benefits, and (iii) considering the benefits, the cost to the Agency is reasonable.
  - f. Utilities and Affiliate Transactions – The purchase of utilities and inter-affiliate transactions are excepted from alternative proposal/quotation requirements.
  - g. Unavailability of three (3) vendors who are able or willing to provide a quote.

3. Basis for the Award of Contracts.

Contracts will be awarded to the lowest responsible dollar offeror who meets the specifications therefor, except in circumstances that the Agency determines justify an award to other than the lowest responsible dollar offeror. In making any such determination, the Agency may consider relevant factors including, without limitation:

- a. Delivery requirements
- b. Quality requirements
- c. Quantity requirements

- d. Past vendor performance and/or experience
  - e. The unavailability of three or more vendors who are able or willing to quote on a procurement.
  - f. It may be in the best interests of the Agency to consider only one vendor who has previous expertise with respect to a particular procurement.
  - g. If the contemplated contract furthers the Agency’s goal of advancing opportunities for a Minority Business Enterprise (MBE)<sup>1</sup> and/or a Women Business Enterprise (WBE)<sup>2</sup> and for purposes herein, the abbreviation “MWBE” shall mean a Minority or Women Owned Business Enterprise) or if the contemplated contract meets the Agency’s MWBE procurement goals as set forth in Section C of this Policy.
  - h. Any procurement excepted from the alternative proposal/quotation requirements as set forth in subdivision 2 of this Section B, and the procurement of professional services in Section F of this Policy.
4. Documentation
- a. A record of all solicitations for alternative proposals or quotations, the response (if applicable), and any determinations pursuant thereto shall be maintained in the procurement file.
  - b. For each procurement by the Agency the chief executive officer of the Agency or authorized designee shall set forth in writing the category of procurement that is being made and what method of procurement is specified.
  - c. Whenever an award is made to other than the lowest responsible dollar offeror the reasons for doing so shall be set forth in writing and maintained in the procurement file.

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<sup>1</sup> Under Article 15-A of the New York Executive Law, an MBE is a business enterprise in which at least fifty-one percent (51%) is owned, operated and controlled by citizens or permanent resident aliens who are meeting the ethnic definitions listed below:

- Black: Persons having origins from any of the Black African racial groups.
- Hispanic: Persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Native American or Latin American origin, regardless of race.
- Asian-Pacific: Persons having origins from the Far East, Southeast Asia or the Pacific Islands.
- Asian-Indian Subcontinent: Persons having origins from the Indian subcontinent.
- Native American or Alaskan Native: Persons having origins in any of the original peoples of North America.

<sup>2</sup> Under Article 15-A of the New York Executive Law, a WBE is a business enterprise in which at least fifty-one percent (51%) is owned, operated and controlled by citizens or permanent resident aliens who are women.

- d. Whenever the specified number of quotations cannot or will not be secured, the reasons for this shall be indicated in writing and maintained in the procurement file.

**C. Erie County Businesses and Minority & Women Owned Enterprises.**

It is the preference of the Agency to provide opportunities for the purchase of goods and services from (i) business enterprises located in Erie County and (ii) certified MWBEs. To that end, the Agency will utilize available lists of MWBE firms certified by Erie County and/or the State of New York and will solicit bids and proposals from such businesses by notifying them of opportunities to submit proposals and bids for goods and services.

Additionally, the Agency shall, from time to time, establish reasonable and attainable MWBE utilization goals for the procurement of goods and services for direct Agency use, to be based on a percentage of applicable Agency procurements.

The Agency shall, from time to time, also establish reasonable and attainable MWBE goals when procuring certain professional services, as more particularly described within the Agency's "Professional Services RFP Process and Policy", as amended from time to time. In instances where the Agency solicits professional services through a scored RFP or RFQ process the Agency shall, as part of the scoring index, consider a respondent's MWBE status, utilization, and/or the respondent's policies, practices and institutional commitments to advance and promote diversity and inclusion.

Such MWBE goals shall be reviewed and adjusted from time to time in order to advance the overall goals of the Agency.

**D. Preferred Source Procurement**

In accordance with Section 162(4) of State Finance Law, the Agency seeks to purchase goods and services from veterans, not-for-profit organizations that serve and employ people who are blind and severely handicapped, and from correctional industry programs if they meet the Agency's needs.

**E. Effect on Other Procurement Requirements.**

Where the procurement of a specific good or service is to be accomplished using funds other than the funds of the Agency and such funding sources specify different or more restrictive procurement requirements than are provided for in this Policy, the procurement requirements of the funding source will supersede the requirements of this Policy. Toward this end, the Agency will follow the procurement standards as set forth in 2 CFR Part 200 for any procurements utilizing federal funds unless otherwise superseded by the specific federal award agreement.

**F. Professional Services.**

Contracts for professional services involve the application of specialized expertise, the use of professional judgment, or a high degree of creativity. Professional services include services which require special education and/or training, license to practice or are creative in nature. Examples are: lawyers, doctors, accountants, and engineers. Furthermore, professional service contracts often involve a relationship of personal trust and confidence. Procurement of professional services below \$20,000 is not subject to the solicitation procedures contained in Section B(1) of this Policy. Procurement of professional services greater than \$20,000 is subject to the existing “Professional Services RFP Process and Policy” as amended from time to time. Specific professional services not otherwise identified within the “Professional Services RFP Process and Policy” are hereby deemed to be so included, as appropriate.

**G. Procurement of Insurance.**

Procurement of Insurance Brokerage services is subject to this Policy as a professional service. Notwithstanding the foregoing actual insurance policies procured are not subject to requirements of this Policy.

**H. Procurement Lobbying Law.**

In accordance with Chapter 1 of the Laws of 2005, generally referred to as the “Procurement Lobbying Law”, the Agency shall implement the provision of such Procurement Lobbying Law for any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of \$15,000.

**I. Unintentional Failure to Comply.**

The unintentional failure to comply with the provisions of Section 104-b of the GML shall not be grounds to void action taken or give rise to a cause of action against the Agency or any officer thereof.

Re-adopted this 23<sup>rd</sup> day of March 2022 by the respective Boards of each corporation referenced above.