

SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
PROCUREMENT POLICY

A. Introduction and Purpose

WHEREAS, pursuant to Article 18-A of the General Municipal Law (the "IDA Act"), §104-b of the General Municipal Law (the "GML"), and the Public Authorities Accountability Act of 2005, the Seneca County Industrial Development Agency ("SCIDA" or the "Agency") is required to adopt procurement policies for procurements of goods and services not subject to the competitive bidding requirements of GML §103 and paid for by the Agency for its own use and account; and

WHEREAS, pursuant to GML §104-b, 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 a political subdivision or district; and

WHEREAS, pursuant to GML §104-b, the Agency desires 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; and

WHEREAS, pursuant to GML §104-b, the Agency desires to promote purchasing from responsible and qualified firms and/or individuals, including small businesses; and

WHEREAS, the Agency desires to encourage the investment of the private and not-for-profit sectors in New York State by making reasonable efforts to ensure that responsible and qualified firms and/or individuals, including small businesses, are provided procurement opportunities with the Agency; and

WHEREAS, the Agency desires to increase participation by Minority and Women-owned Business Enterprises ("MWBE"), certified pursuant to Article 15-A of the New York Executive Law (the "MWBE Act"), in contracts and subcontracts so as to facilitate the award of a fair share of such contracts to those entities; and

WHEREAS, the Agency desires to ensure regular and critical review of the efficiency, integrity and effectiveness of the overall process.

NOW THEREFORE,

B. The Agency's Procurement Policy Shall Be As Follows:

Section 1. *Determination Required as to Competitive Bidding.*

Prior to commencing any procurement of goods and services, the Executive Director or Agency board ("Board") approved authorized designee shall prepare a written statement in the forms attached hereto as "Exhibit A" [Procurement Form 1] and "Exhibit B" [Procurement Form 2], setting forth the basis for:

(1) the determination that competitive bidding is not required for such procurement; and, if applicable,

(2) the determination that such procurement is not subject to any requirements set forth in this policy. Such written statements shall be maintained by the Executive Director or Board approved authorized designee in a specially designated procurement file.

Prior to the final bid award for a contract or work the cost of which exceeds \$5,000, the Board shall approve or ratify such bid.

Section 2. *Procedure for Determining Whether Procurements Are Subject to Competitive Bidding.*

The procedure for determining whether a procurement of goods and services is subject to competitive bidding shall be as follows:

(a) The Executive Director or Board approved authorized designee shall make the initial determination as to whether competitive bidding is required. This determination will be made with an analysis of the applicability of GML §103 which requires competitive bidding for expenditures of: (1) more than \$20,000 for the performance of any public works contract (services, labor or construction), and (2) more than \$10,000 for any purchase contract (acquisition of commodities, materials, supplies or equipment).

(b) The Executive Director or Board approved authorized designee shall review the purchase request against prior years' expenditures and a good faith effort will be made to determine whether it is known or can reasonably be expected that the aggregate purchases of a similar nature will exceed the above competitive bidding procedures.

(c) The Executive Director or Board approved authorized designee shall present any legal issues regarding the applicability of the competitive bidding requirements stated herein to the Agency's Counsel.

(d) The written determinations, referenced above, shall be made on the forms prepared in connection with this Procurement Policy (referenced previously, "Exhibit A" and "Exhibit B").

Section 3. *Methods of Competition to be Used for Non-Bid Procurements and Procurements Exempt by Statute.*

Alternative proposals or quotations for goods and services shall be secured by use of written requests for proposals or written quotations, electronic quotations or any other method of procurement which furthers the purposes of this Section except for items in Section 7 or procurements made pursuant to:

- (a) GML §103(3) (through county contracts), or
- (b) GML §104 (through state contracts), or
- (c) State Finance Law §175-b (from agencies for the blind or severely handicapped), or
- (d) Correction Law §186 (articles manufactured in correctional institutions).

Section 4. *Procedures for the Purchase of Commodities, Equipment or Goods under Ten Thousand Dollars (\$10,000).*

- (a) Up to \$500 The discretion of the Executive Director or Board approved authorized designee.
- (b) \$501 - \$3,000 Documented verbal quotations from at least three (3) vendors.
- (c) \$3,001 - \$10,000 Written/fax quotations from at least three (3) vendors.

Section 5. *Procedures for the Purchase of Public Works or Services under Twenty Thousand Dollars (\$20,000).*

- (a) Up to \$1000 The discretion of the Executive Director or Board approved authorized designee
- (b) \$1,001 - \$5,000 Documented verbal quotations from at least three (3) vendors.
- (c) \$5,001 - \$20,000 Written/fax quotations from at least three (3) vendors.

Section 6. *Basis for the Award of Contracts.*

Contracts will be awarded to the lowest responsible vendor who meets the specifications, except as provided in Sections 7 and 9 hereinafter.

Section 7. Circumstances Justifying an Award to Other Than The Lowest Cost Quoted.

There may be certain circumstances related to a discretionary award to a vendor other than the lowest-cost bidder including, but not limited to, the following:

- (a) Delivery requirements;
- (b) Quality requirements;
- (c) Quality;
- (d) Past vendor performance;
- (e) The unavailability of three or more vendors who are able to quote on a procurement; and/or
- (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.

The Agency shall document its findings with respect to the discretionary award on one of the applicable Procurement Forms annexed hereto.

Section 8. Documentation.

- (a) For each purchase made the Executive Director or Board approved authorized designee shall set forth in writing the category of procurement that is being made and what method of procurement is specified.
- (b) The basis for any determination that competitive bidding is not required shall be documented, in writing, by the Executive Director or Board approved authorized designee, on the forms annexed hereto, and filed with the purchase order or contract therefor. [See "Exhibit A," Procurement Form 1]
- (c) For those items not subject to competitive bidding such as: professional services, emergency situations, goods or services purchased under county contracts, or procurements from sole sources, documentation should include a memorandum to the file which details the reasons why the procurement is not subject to competitive bidding and include, as applicable [See "Exhibit B," Procurement Form 2]:
 - (i) a description of the facts giving rise to the emergency and that they meet the statutory criteria; or
 - (ii) a description of the professional services; or
 - (iii) written verification of County contracts; or
 - (iv) opinions of Counsel, if any; or
 - (v) a description of sole source items and how such determinations were made.

- (d) Whenever an award is made to other than to the lowest cost bidder or vendor, the reasons for such award shall be set forth in writing and maintained in the procurement file.
- (e) Whenever the specified number of quotations cannot or will not be secured, the reasons for that situation shall be indicated in writing and maintained in the procurement file.
- (f) The Executive Director or Board approved authorized designee may utilize the appropriate forms attached as "Exhibit A" and "Exhibit B" hereto as the required documentation hereunder, related to procurement opportunities and awards.

Section 9. *Exceptions to Bidding.*

- (a) Emergency Situation – An emergency exists if the delay caused by soliciting quotes would endanger the health, welfare or property of the municipality or of its citizens. With approval by the Executive Director, such an emergency shall not be subject to competitive bidding or the procedures stated above.
- (b) Resolution Waiving Bidding Requirements – The Agency may adopt a resolution waiving the competitive bidding requirements whenever it is determined to be impracticable, or where, for reasons of efficiency or economy, there is a need for standardization, purchase contracts for a particular type or kind of equipment and a full explanation of the reasons for its adoption.
- (c) Sole Source – Defined as a situation when there is only one possible source from which to procure goods and/or services and it is shown that the item needed has unique benefits, the cost is reasonable for the product offered and there is no competition available. In this situation, a request for a resolution waiving bidding requirements, as described above, is required.
- (d) True Lease – Prices will be obtained through quotations whenever possible. The award shall be made on the basis of goods and/or services to be provided, ability to meet the specifications desired and price.
- (e) Insurance – All insurance policies shall be procured in accordance with the following procedures:
 - (i) Premium less than \$10,000 – documented telephone quotations from at least three (3) agents (if available).

(ii) Premium over \$10,001 – written quotations/fax or proposals from at least three (3) agents (if available).

(f) Professional Services – This category includes services which require special education and/or training, license to practice or are creative in nature. Examples of providers of professional services are: lawyers, doctors, accountants, engineers, artists, consultants etc. For the procurement of professional services, the Executive Director shall set forth the analysis by completing "Exhibit B", a copy of which is attached hereto.

Section 10. *Minority and Women Business Enterprises.*

The Agency shall comply with all applicable legal requirements relating to the procurement opportunities for such businesses, as governed by the MWBE Act.

Section 11. *Input from members of the Agency.*

The Agency shall solicit comments concerning the procurement policy from its members on a periodic basis.

Section 12. *Annual Review.*

The Agency shall annually review its policies and procedures.

Section 13. *Unintentional Failure to Comply.*

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

Section 14. *Pre-Qualified Bidder/Vendor List.*

(a) The Agency may establish guidelines governing the qualifications and maintain a list of bidders who meet those qualifications (the "Pre-Qualified Bidder List") in which case, bidding shall be restricted to those bidders who have qualified prior to the receipt of bids (the "Pre-Qualified Bidders"). In determining the qualifications for inclusion on the Pre-Qualified Bidder List, the Agency shall consider the experience and record of performance of each prospective bidder/vendor in the particular type of work, as well as, document its findings on Procurement Form 3, annexed hereto as "Exhibit C." The following criteria shall be considered:

(i) the prospective bidder's ability to undertake the particular type and complexity of work;

(ii) the financial capability, responsibility and reliability of the prospective bidder for such type and complexity of work;

- (iii) the record of the prospective bidder in complying with existing labor standards and maintaining harmonious labor relations;
 - (iv) the prospective bidder's compliance with equal employment opportunity requirements and anti-discrimination laws, and demonstrated commitment to working with minority and women-owned businesses through joint ventures or subcontractor relationships; and
 - (v) the record of the prospective bidder in protecting the health and safety of workers on public works projects and job sites as demonstrated by the prospective bidder's experience modification rate for each of the last three years.
- (b) If the Agency chooses to maintain the Pre-Qualified Bidder List, the Agency must annually publish in a newspaper of general circulation in Seneca County an advertisement requesting prospective bidders to submit qualification statements. Lists of pre-qualified bidders may be established on a project specific basis. The form attached as "Exhibit D", [Procurement Form 4], shall be used when evaluating prospective Pre-Qualified Bidders on a project specific basis. The Pre-Qualified Bidder List shall include all bidders that qualify; provided, however, that any such list shall have no less than five (5) bidders but shall remain open for all additional qualified bidders. The Agency's procedures for pre-qualifying bidders shall include an appeals process for those denied a place on a pre-qualified list. Any denial must be made upon a rational basis and substantial evidence, cannot be arbitrary or capricious, and shall be subject to judicial review pursuant to article seventy-eight of the civil practice law and rules. The Agency may move forward on the contract award during such administrative appeals.

Section 15. *Board Approval.* Notwithstanding any other provision contained herein or any other policy of the Agency, prior to any bid award for any contract or work the cost of which exceeds \$2,500, such bid award or contract shall require the approval of the Board.

Approved and Adopted on 3/5/2009.
Reviewed and Re-adopted on 3/28/2011