

POLICIES -- PURCHASING

BOARD MEETING NUMBER: CC-169

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PROCUREMENT CONTRACTS

Introduction

This Policy sets forth the guidelines of the New York State Canal Corporation (“Corporation”) regarding the Corporation’s use, awarding, monitoring and reporting of procurement contracts. These guidelines are not intended and shall not be deemed to grant or confer any rights or remedies to or upon any third party.

Except as otherwise provided herein, all Corporation procurement contracts are subject to these guidelines. Attachment 1 sets forth a representative (but not exclusive) list of the types of goods purchased, and a description of those areas of responsibility and oversight requiring the use of services and the reasons for the use of services in such areas.

I. Definitions

- A. “Emergency” shall mean an unanticipated, sudden and unexpected occurrence beyond the control of the Corporation which threatens: a) the life, health, safety or welfare of any person, or b) the continued public use or function of property of the Corporation or the State of New York.
- B. “Minority-owned Business Enterprise” shall have the same meaning as that set forth in Public Authorities Law Section 2879.
- C. “New York State Business Enterprise” shall mean any business enterprise which offers for sale, lease or other form of exchange, goods or services sought by the Corporation which are substantially manufactured, produced, assembled or performed within New York State.
- D. “New York State Resident” shall have the same meaning as that set forth in Public Authorities Law Section 2879.

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- E. "Procurement Contract" shall mean any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of fifteen thousand dollars (\$15,000) or more.
- F. "Professional Firm" shall mean any individual or sole proprietorship, partnership, corporation, association or other legal entity permitted by law to practice the professions of architecture, engineering or surveying.
- G. "Women-owned Business Enterprise" shall have the same meaning as that set forth in Public Authorities Law Section 2879.

II. Selection of Contractors for Goods

Except as otherwise provided in this Policy, the Corporation shall award procurement contracts for goods to the lowest responsible bidder as will best promote the Corporation's interests, taking into consideration: the reliability of the contractor; the quality of the goods to be furnished; the goods' conformity with the specifications; the terms of delivery; and/or such other criteria as the Corporation determines appropriate. The Corporation shall solicit bidders for such contracts pursuant to Article 4-C of the New York State Economic Development Law (e.g., advertise in the Contract Reporter). In addition, the Corporation shall solicit price quotes from at least three (3) sources, if available.

III. Selection of Contractors for Services

- A. The Corporation may contract for services when, because of one or more of the following factors or considerations, it is more beneficial for such services to be contracted for than performed by employees of the Corporation:
 - 1. lack of or unavailability of staff, facilities, equipment or other resources;
 - 2. requirement of special expertise or abilities;
 - 3. timing;
 - 4. short term or infrequent need for the service; or
 - 5. geographic needs.

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- B. Except as otherwise provided in this Policy, the Corporation shall award procurement contracts for services to a responsive and responsible contractor on the basis of best value, taking into account: the contractor's experience and capability to perform the required services; the adequacy of contractor's staff to be assigned to Corporation work; the overall quality and responsiveness of the contractor's proposal; the contractor's fee structure and overall price; and/or such other criteria as the Corporation determines appropriate. The Corporation shall solicit proposals for such contracts pursuant to Article 4-C of the New York State Economic Development Law (e.g., advertise in the Contract Reporter). In addition, the Corporation shall solicit proposals from at least three (3) contractors, if available.
- C. The Corporation shall award procurement contracts for the services of Professional Firms on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable fees.
- D. The Director of Purchasing may, in consultation with the appropriate Corporation program managers, designate those services other than the services of Professional Firms for which cost will be the only criterion for determining best value.

IV. Waiver of Competition

The Corporation Board may waive the use of the competitive procedure for procurement contracts provided in this Policy based upon one or more of the following findings:

- A. There is a need to respond to an Emergency.
- B. A condition exists that makes it impractical or not in the Corporation's best interest to seek competition due to the specialized nature of the goods or services required.
- C. There is a historical relationship, the continuation of which is in the best interests of the Corporation.
- D. There is a need for confidentiality.
- E. The proposed project requires specialized knowledge of, or proximity to, the Corporation.

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- F. There is a requirement for which, in the sole opinion of the Corporation, there is a lack of responsible competition to perform the desired services.
- G. There is a specific contractor selection that is necessary or convenient to the operations of the Corporation.
- H. The purchase of goods or services will be from a small business concern or certified Minority-owned or Women-owned Business Enterprise, or the purchase is for goods or technology that are recycled or remanufactured, in an amount that does not exceed \$200,000.

V. General Procurement Requirements

- A. The Corporation shall ensure that its procurement contracts comply with the public notification requirements of Article 4-C of the New York State Economic Development Law.
- B. In order to encourage the use of Minority-owned and Women-owned Business Enterprises in its procurement contracts, the Corporation shall:
 - 1. Provide notice to professional and other organizations that serve Minority-owned and Women-owned Business Enterprises providing the types of services procured by the Corporation.
 - 2. Maintain and regularly update lists of qualified, certified Minority-owned and Women-owned Business Enterprises that have expressed an interest in doing business with the Corporation. The Corporation shall also consult the lists maintained by the New York State Department of Economic Development (DED) that identify certified Minority-owned and Women-owned Business Enterprises.
 - 3. Establish appropriate goals for participation by Minority-owned and Women-owned Business Enterprises in procurement contracts awarded by the Corporation.
 - 4. Conduct procurements in a manner that will enable the Corporation to achieve the maximum feasible portion of its established goals and that eliminate barriers to participation by Minority-owned and Women-owned Business Enterprises in Corporation procurements.

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- C. The Corporation shall not enter into a procurement contract with any current or former officer or employee of the Corporation where such contract would be in contravention of law or would create a conflict of interest.
- D. The Corporation shall ensure that its procurement contracts in an amount equal to or in excess of one million dollars (\$1,000,000) comply with the Omnibus Procurement Act of 1992, as amended. As part of such compliance, the Corporation shall encourage New York State Business Enterprises and New York State residents to participate in its procurement contracts. Except for those procurement contracts that involve funds received from another state, such encouragement shall include the following:
 - 1. The Corporation shall collect and consult the specifications of New York State Business Enterprises in developing specifications for any procurement contract for the purchase of goods where possible, practicable, feasible and consistent with open bidding. The Corporation shall, where feasible, consult with the New York State Office of General Services (OGS) in developing such specifications.
 - 2. With the cooperation of DED and through cooperative efforts with contractors, the Corporation shall notify New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Corporation procurement contracts with a value of one million dollars (\$1,000,000) or more.
- E. The Corporation shall submit all procurement contracts in excess of \$50,000 to the New York State Comptroller's Office for pre-approval.
- F. The Executive Director must approve all contractor selections for procurement contracts for services based upon the recommendation of either the Non-Engineering Personal Services Committee or the Professional Firm Selection Committee.
- G. The Corporation may utilize the procurement contracts of other Federal, State or local entities to purchase goods or services provided it would be in the Corporation's best interests to do so.
- H. The Corporation shall comply with State Finance Law Sections 139-j and 139-k that place restrictions on attempts to influence during the procurement process, require the recording of attempts to influence made during the restricted period for a procurement, and outline the responsibilities of offerors relative to the procurement process.

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- I. The Corporation will perform an affirmative review of a contractor's or Professional Firm's responsibility, in accordance with applicable laws, rules, regulations and guidelines, prior to the award of a procurement contract. This review shall be designed to provide reasonable assurance that the proposed contractor or Professional Firm is responsible and should consider such issues as: integrity; performance on other governmental contracts; legal ability to supply the product or perform the services; and financial and organizational capability.
- J. The Corporation will create a record for each procurement contract that documents its compliance with this Policy.

VI. Procurement Contract Provisions

To the extent deemed appropriate by the Executive Director and the General Counsel, procurement contracts may include, but should not necessarily be limited to, the following provisions:

- A. Scope of Services
- B. Compensation
- C. Payment Methodology
- D. Term or Time for Performance
- E. Personnel, Equipment and Supplies
- F. Standards of Performance
- G. Independent Contractor
- H. Subcontracting
- I. Insurance and Bond Requirements
- J. Liability and Indemnification
- K. Ethics
- L. Confidentiality and Non-Disclosure
- M. Lobbying Law Certification
- N. Public Announcements
- O. Interchange of Data
- P. Environmental Review
- Q. Damages for Delay
- R. Suspension, Abandonment and Termination
- S. Severability Clause
- T. Non-Assignment Clause
- U. Comptroller Approval
- V. Workers' Compensation and Disability Benefits
- W. Non-Discrimination Requirements

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- X. Wage and Hours Provisions
- Y. Non-Collusive Bidding Requirement
- Z. International Boycott Prohibition
- AA. Set-Off Rights
- AB. Records
- AC. Identifying Information and Privacy Notification
- AD. Equal Employment Opportunities for Minorities and Women
- AE. Conflicting Terms
- AF. Governing Law
- AG. Late Payment
- AH. No Arbitration
- AI. Service of Process
- AJ. Prohibition on Purchase of Tropical Hardwoods
- AK. MacBride Fair Employment Principles
- AL. Omnibus Procurement Act of 1992
- AM. Reciprocity and Sanctions Provisions
- AN. Purchases of Apparel
- AO. Observance of Laws
- AP. No Waiver of Provisions
- AQ. Entire Agreement

VII. Delegations

The Corporation Board must approve all procurement contracts unless such approval has been otherwise delegated in this Policy.

- A. The Executive Director or the Executive Director's designee is authorized to:
 - 1. Execute any procurement contract, including any amendments thereto, for expenditures in an amount not to exceed \$150,000.
 - 2. Approve an increased expenditure by the Corporation not to exceed \$150,000 for any procurement contract previously approved by the Corporation Board.
 - 3. Approve or extend procurement contracts for a period in excess of one year provided such contract or extension does not exceed \$150,000.
 - 4. Waive the use of a competitive procedure for any procurement contract needed to respond to an Emergency in accordance with the procedure set forth in the Thruway

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Authority/Canal Corporation Emergency Procedure for Emergency Work.

5. Waive the use of a competitive procedure for any procurement contract in an amount not to exceed \$150,000 when the Executive Director finds one or more of the conditions set forth in Article IV(B)-(G) of this Policy to be present and waive the use of a competitive procedure for any procurement contract for the purchase of goods or services from a small business concern or certified Minority-owned or Women-owned Business Enterprise, or for goods or technology that are recycled or remanufactured, in an amount not to exceed \$200,000.
 6. Interpret, implement and administer this Policy, including the development of operational and/or administrative policies and procedures necessary to carry out its intent. These operational and/or administrative policies should, at a minimum, identify the roles and responsibilities of Corporation personnel implementing and administering this Policy and the manner in which those responsibilities are to be fulfilled.
 7. Appoint a Procurement Integrity Officer whose responsibilities shall include the establishment of processes to prevent or detect improper lobbying influence, to provide guidance to program managers regarding vendor responsibility determinations, to administer the Contract Review and Vendor Responsibility Committee, and to ensure the Corporation is in compliance with applicable executive orders, laws, rules and regulations regarding procurement integrity and vendor responsibility.
 8. Pursuant to Public Authorities Law Section 2879, appoint one or more senior staff to oversee the Corporation's programs established to promote and assist the participation and utilization of certified Minority-owned and Women-owned Business Enterprises in the Corporation's procurement opportunities.
- B. The Director of Purchasing or the Director of Purchasing's designee is authorized to execute procurement contracts for goods provided the process used to procure such goods is in accordance with Corporation procedures, the contractor selected was the lowest responsible bidder for such goods, and there is sufficient funds in the budget for such procurement. The Director of Purchasing may, without a formal competitive process, execute any procurement contract for the purchase of goods from a small business concern or certified Minority-owned or Women-owned Business Enterprise, or for goods or technology that are recycled or remanufactured, in an amount not to exceed \$200,000.

VIII. Review and Reporting Requirements

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- A. In accordance with Public Authorities Law Section 2879, the Corporation Board shall annually review and approve this Policy and prepare and distribute annual reports about its procurement contracts.
- B. The Executive Director shall report to the Board quarterly on all contracts or amendments thereto that he or she has executed pursuant to Article VII(A) of this Policy.

IX. Miscellaneous Provisions

- A. The Corporation's failure to comply with the provisions of this Policy shall not alter, modify the terms of, affect the validity of, or impair any of the Corporation's rights or privileges under any procurement contract to which the Corporation is a party.
- B. The Corporation may allow other Federal, State or local entities to purchase goods or services through a Corporation procurement contract provided it would be in the Corporation's best interests to do so and such procurement is acceptable to the contractor.

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ATTACHMENT 1**A. Types of Goods Purchased**

The following is an illustrative (but not exclusive) list of the types of goods the Corporation has purchased in the past and may purchase in the future:

- Office equipment, furniture and supplies such as fax machines, copiers, audio/video equipment, copier toner and paper;
- Computer equipment and supplies such as mainframe components and related equipment, personal computers, software, and peripheral equipment, accessories and supplies;
- Heavy construction equipment such as bulldozers, wheel loaders, crawler loaders, excavators, and pavers;
- Marine fleet vessels and related equipment such as barges, tugs, buoy tenders, marine generators, deck cranes and buoys;
- Motorized automotive truck fleet and related equipment such as diesel and gas trucks of all sizes, plow trucks, plow attachments, material spreaders, aerial lift trucks and tow trucks;
- Prefabricated buildings, building equipment such as furnaces, boilers, and air conditioners, and building maintenance equipment and supplies;
- Uniforms for highway maintenance, toll and canal employees;
- Road maintenance materials such as salt, ice control abrasives and de-icing solutions;
- Highway construction materials such as asphaltic materials, sand, stone, gravel and ready-mix concrete;
- Property maintenance equipment and supplies such as mowers, tractors and associated equipment;

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- Telecommunication systems utilizing conventional and fiber optic technologies including cell phones, pagers, telephone switching equipment, radios, radio towers, equipment and accessories;
- Intelligent transportation systems equipment supporting E-ZPassSM and automatic vehicle identification (AVI);
- Sign fabrication materials, equipment and supplies including aluminum sheets and sign blanks, reflective sheeting and sign making machines;
- Building security systems, fire alarms and suppression systems, and card access and badging systems.

B. Types of Services Purchased

The Corporation purchases services for a variety of reasons including, but not limited to, the need to: augment in-house staff; provide expertise in specialized areas; provide independent review; serve as a liaison with certain entities; and handle specialized matters expeditiously. The following is an illustrative (but not exclusive) list of the types of services the Corporation has purchased in the past or may purchase in the future:

- Legal
Provide legal services to the Corporation in the areas of bond and note financing, environmental review compliance, litigation, real property matters, labor issues, intellectual property, technology and computer law, insurance law, and government relations.
- Expert Witness
Provide the Corporation with expert analysis of issues raised in litigation and serve as expert witness at trial as needed. Such issues may include, but shall not be limited to: medical assessment of personal injuries, economic analysis of potential lost earnings, and accident reconstruction.
- Audit and Accounting
Provide audit services pertaining to the year-end preparation of financial statements for the Corporation in conformance with generally accepted accounting principles. Perform special audits and provide financial advisory services as requested.

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- Building Maintenance and Security
Provide building maintenance services such as janitorial, HVAC, rubbish removal, electrical preventive maintenance, elevator inspection and maintenance, and security, including guards.
- Investment Banking
Competitive sales: Purchase and distribute Corporation debt issuances. Negotiated sales: Provide assistance in the preparation, sale, marketing and distribution of Corporation debt issuances.
- Environmental
Provide environmental services such as hazardous waste removal and disposal, asbestos removal, air quality testing and weather forecasting.
- Financial/Transportation/Counting
Provide courier and money counting services from toll facilities to banking facilities and Dun and Bradstreet financial reporting.
- Trustee Banking Services
Provide banking services to monitor the timely receipt of debt service payments, compliance and reserve requirements, retirement of debt, collateral evaluations and other services as required by the various debt resolutions.
- Communications
Provide radio and intercom installation, highway advisory radio installation, radio tower installation and coin operated telephone service for the public.
- Engineering
Provide engineering services for Corporation owned or operated facilities, including but not limited to, design and construction inspection engineering services.
- Architectural
Provide architectural services for Corporation owned or operated facilities.
- Surveying
Provide surveys of Corporation owned properties to establish boundaries, utility locations, etc.

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- Real Property Advisory Services
Assist the Corporation with evaluations of Corporation property including the value and potential uses thereof.
- Computer Programming Services
Assist the Corporation with the design, implementation and operation of computer programs that will enable the Corporation to function more efficiently.
- Health
Provide health care services such as medical testing, nursing and prescription eyeglass services.
- Equipment Maintenance
Provide routine service and repair of office, data processing, bridge, building, highway maintenance and motorized equipment.
- Risk Management Consulting
Provide risk management services to assist the Corporation with its insurance program.
- Property Disposal
Provide auction services for disposal of used vehicles, equipment and parts.
- Training
Provide supervisory and special skills to Corporation employees.
- Printing
Provide financial printing services based upon specifications and detail developed by the Corporation. Provide various technical printing services relative to the reproduction of forms and other printed matter. Provide technical, graphic, layout and printing services in connection with production of the Corporation's annual report and any other reports, brochures, maps or printed matter that may be necessary or desirable.