

ERIENET LOCAL DEVELOPMENT CORPORATION

PROCUREMENT POLICY

A. Introduction

1. Applicability – This Procurement Policy (“Policy”) shall apply to the ErieNet Local Development Corporation (the “Corporation”) upon approval by the respective Board of Directors or Members of the Corporation.
2. Scope – In accordance with Section 104-b of the New York General Municipal Law (the “GML”) and the Public Authorities Accountability Act of 2005, the Corporation is required to adopt procurement policies which will apply to the procurement of goods and services paid for by the Corporation 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 Executive Director of the Corporation 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.
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 Corporation 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 – as also described in Section E(2), below, an emergency exists if the delay caused by soliciting quotes would endanger health, welfare, property or an economic development opportunity. Approval of the Executive Director 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 Corporation 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 Corporation determines justify an award to other than the lowest responsible dollar offeror. In making any such determination, the Corporation 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 Corporation to consider only one vendor who has previous expertise with respect to a particular
- g. 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 Corporation the Executive Director of the Corporation 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.
 - 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. Preferred Source Procurement

In accordance with Section 162(4) of State Finance Law, the Corporation 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 Corporation's needs.

D. 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 Corporation 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 Corporation 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.

E. Circumstances where Solicitations of Alternative Proposals and Quotations not in the Best Interest of the Corporation.

Pursuant to Section 104-b(2)(g) of the New York General Municipal Law, this Policy may contain circumstances when, or types of procurements for which, in the sole discretion of the members of the Board of Directors of the Corporation, the solicitation of alternative proposals or quotations will not be in the best interest of the Corporation. In the following circumstances, it may not be in the best interests of the Corporation to solicit quotations or document the basis for not accepting the lowest bid:

1. Professional Services. Professional services are services requiring special or technical skill, licensing, training or expertise. The individual, company or firm must be chosen based on accountability, reliability, responsibility, skill, conflict of

interests, reputation, education and training, judgement, integrity, continuity of service and moral worth. Furthermore, certain professional services to be provided to the Corporation, e.g., legal and accounting services, impact liability issues of the Corporation and its members, including securities liability in circumstances where the Corporation is issuing bonds. These qualifications and the concerns of the Corporation regarding its liability and the liability of its members are not necessarily found or addressed in the individual, company or firm that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

In determining whether a service fits into this category, the Corporation shall take into consideration the following guidelines: (a) whether the services are subject to state licensing or testing requirements; (b) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and (c) whether the services require a personal relationship between the individual and the members of the Corporation. Professional or technical services shall include but not be limited to the following: services of an attorney (including bond counsel); technical services of an engineer or architect engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; management of Corporation-owned property; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

2. Emergency Purchases. Emergency purchases pursuant to Section 103(4) of the General Municipal Law. Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety or welfare of the public. This section does not preclude alternate proposals if time permits.

F. 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.

G. Procurement Lobbying Law.

In accordance with Chapter 1 of the Laws of 2005, generally referred to as the “Procurement Lobbying Law”, the Corporation 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.

H. 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 Corporation or any officer thereof.

Adopted this 12 day of September, 2022