
 GENERAL POLICY 	<table border="1"> <tr> <td data-bbox="1260 92 1503 170"> NUMBER 25-5-01 </td> </tr> <tr> <td data-bbox="938 170 1503 275"> POLICIES – PURCHASING </td> </tr> </table>	NUMBER 25-5-01	POLICIES – PURCHASING
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APPROVED BOARD MEETING NUMBERS: 720 and CC-205 RESOLUTION NUMBERS: 6099; 658 DATE: June 6, 2016	SUBJECT PROCUREMENT CONTRACTS		

Introduction

This Policy sets forth the guidelines of the New York State Thruway Authority and New York State Canal Corporation (“Authority”) regarding the Authority’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 Authority 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 or unexpected event or escalation of an event beyond the control of the Authority which, if not immediately corrected, would endanger: a) the life, health, safety or welfare of any person, or b) the continued public use or function of a transportation or other facility or property of the Authority 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 Authority 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.
- 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.

H. “Service Disabled Veteran Owned Business Enterprise” shall have the same meaning as that set forth in Article 17-B of the Executive Law Section 369-H.

II. Selection of Contractors for Goods

Except as otherwise provided in this Policy, the Authority shall award procurement contracts for goods to the lowest responsible bidder as will best promote the Authority’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 Authority determines appropriate. The Authority shall solicit bidders for applicable contracts pursuant to Article 4-C of the New York State Economic Development Law (e.g., advertise in the Contract Reporter). The Authority shall solicit price quotes from at least three (3) sources, if available.

III. Selection of Contractors for Services

A. The Authority 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 Authority:

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.

B. Except as otherwise provided in this Policy, the Authority 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 Authority 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 Authority determined appropriate. The Authority shall solicit proposals for applicable contracts pursuant to Article 4-C of the New York State Economic Development Law (e.g., advertise in the Contractor Reporter). The Authority shall solicit price quotes from at least three (3) sources, if available.

- C. The Authority 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 Authority 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 Authority 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 Authority'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 Authority.
- D. There is a need for confidentiality.
- E. The proposed project requires specialized knowledge of, or proximity to, the Authority.
- F. There is a requirement for which, in the sole opinion of the Authority, 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 Authority.
- H. The purchase of goods or services will be from small business concerns or certified Minority Owned or Women Owned Business Enterprises (MWBE), or the purchase is for goods or technology that are recycled or remanufactured, in an amount that does not exceed two hundred thousand dollars (\$200,000).

V. General Procurement Requirements

- A. The Authority shall ensure that its procurement contracts in an amount equal to or in excess of fifty thousand dollars (\$50,000) 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 MWBE and Service Disabled Veteran Owned Business

Enterprises (SDVOB) in its procurement contracts, the Authority shall:

1. Provide notice to professional and other organizations that serve MWBE and SDVOB providing the types of goods and services procured by the Authority.
 2. Maintain and regularly update lists of qualified, certified MWBE and SDVOB that have expressed an interest in doing business with the Authority. The Authority shall also consult the lists maintained by the New York State Department of Economic Development (DED) that identify certified MWBE and the list maintained by the New York State Office of General Services (OGS) that identify SDVOB.
 3. Establish appropriate subcontracting goals for participation by MWBE and SDVOB in procurement contracts awarded by the Authority.
 4. Conduct procurements in a manner that will enable the Authority to achieve the maximum feasible portion of its established goals and that eliminate barriers to participation by MWBE and SDVOB in Authority procurements.
- C. The Authority shall not enter into a procurement contract with any current or former officer or employee of the Authority where such contract would be in contravention of law or would create a conflict of interest.
- D. The Authority 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 Authority 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 Authority 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 Authority shall, where feasible, consult with OGS in developing such specifications.
 2. With the cooperation of DED and through cooperative efforts with contractors, the Authority shall notify New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Authority procurement contracts with a value of one million dollars (\$1,000,000) or more.

- E. The Authority shall submit all procurement contracts in excess of fifty thousand dollars (\$50,000) to the New York State Comptroller's Office for 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 Authority may utilize the procurement contracts of other Federal, State or local entities to purchase goods or services provided it would be in the Authority's best interests to do so.
- H. The Authority 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.
- I. The Authority 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 Authority 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
- X. Wage and Hours Provisions
- Y. Non-Collusive Bidding Certification
- 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 Authority 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 two hundred thousand dollars (\$200,000).
 2. Approve an increased expenditure by the Authority not to exceed two hundred thousand dollars (\$200,000) for any procurement contract previously approved by the Authority Board.
 3. Approve or extend procurement contracts for a period in excess of one year provided such contract or extension does not exceed two hundred thousand dollars (\$200,000).
 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 Authority Procedure for Declared Emergency Work.
 5. Waive the use of a competitive procedure for any procurement contract in an amount not to exceed two hundred thousand dollars (\$200,000) when the Executive Director or the Executive Director's designee finds one or more of the conditions set forth in Article IV. B. - H. of this Policy to be present.
 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 Authority 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 Authority is in compliance with applicable executive orders, laws, rules and regulations regarding procurement integrity and vendor responsibility.
 8. Appoint one or more senior staff to oversee the Authority's programs established to promote and assist the participation and utilization of certified MWBE in the Authority'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 Authority procedures, and the contractor was selected based on a solicitation for bids. 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 MWBE, or for goods or technology that are recycled or remanufactured, in an amount not to exceed two hundred thousand dollars (\$200,000).

VIII. Review and Reporting Requirements

- A. In accordance with Public Authorities Law Section 2879, the Authority 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 procurement contracts or amendments thereto that he or she has executed pursuant to Article VII. A. of this Policy.

IX. Miscellaneous Provisions

- A. The Authority'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 Authority's rights or privileges under any procurement contract to which the Authority is a party.
- B. The Authority may allow other Federal, State or local entities to purchase goods or services through an Authority procurement contract provided it would be in the Authority's best interests to do so and such procurement is acceptable to the contractor.

ATTACHMENT 1

A. Types of Goods Purchased

The following is an illustrative (but not exclusive) list of the types of goods the Authority 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;
- 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-ZPass[®] 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 Authority 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 Authority has purchased in the past or may purchase in the future:

- Legal
Provide legal services to the Authority 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 Authority 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 Authority in conformance with generally accepted accounting principles. Perform special audits and provide financial advisory services as requested.
- 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 Authority debt issuances. Negotiated sales: Provide assistance in the preparation, sale, marketing and distribution of Authority 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 and radio tower installation.
- Engineering
Provide engineering services for Authority owned or operated facilities, including but not limited to, design and construction inspection engineering services.
- Architectural
Provide architectural services for Authority owned or operated facilities.
- Surveying
Provide surveys of Authority owned properties to establish boundaries, utility locations, etc.
- Real Property Advisory Services
Assist the Authority with evaluations of Authority property including the value and potential uses thereof.
- Computer Programming Services
Assist the Authority with the design, implementation and operation of computer programs that will enable the Authority 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 Authority with its insurance program.
- Training
Provide supervisory and special skills to Authority employees.
- Printing
Provide financial printing services based upon specifications and detail developed by the Authority. 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 Authority's annual report and any other reports, brochures, maps or printed matter that may be necessary or desirable.