



ERIE COUNTY WATER AUTHORITY
INTEROFFICE MEMORANDUM
January 8, 2024

TO: Terrence D. McCracken, Secretary to the Authority

CC: Joyce Tomaka, Chief Financial Officer

FROM: Lavonya Lester, Director of Administration *LCL*

SUBJECT: New Procurement Policy 2024 – Approval Requested

Presented to you today is the new proposed Authority procurement policy. We have worked to update and implement a new procurement policy that reflects recent changes to the Authority's Enabling Legislation and that is in line with today's purchasing practices within the water industry.

As we continue to face complex challenges with supply chain issues, the changes to the Authority procurement policy will allow for a sustainable solution to obtaining the needed supplies and materials to maintain the Authority's sole purpose of supplying potable drinking water to its customers.

This policy includes higher purchasing limits which positively affect the efficiency and performance of the Authority. It also includes information that will guide all buyers with the correct, most practical, and economical way of procuring supplies, materials, and services.

Some of the highlights of the new procurement policy include the following:

- ❖ Formal bidding limits are now \$20,000+ for non-construction and \$35,000+ for construction related purchases.
- ❖ Small purchase limits have increased to \$1,000 from \$250.
- ❖ Sole Source purchases over \$20,000 will be presented to the board for approval.
- ❖ The Board will be presented with a list of standardized single source suppliers annually for approval and the approved list will serve as an appendix to the new policy.
- ❖ As has been the practice for the last year and a half, formal resolutions are no longer required for requests for proposal and advertisements of formal bids. Division heads will sign off on all advertisements for bidding and requests for proposals.

This policy will be reviewed and evaluated on an annual basis to ensure best practices are being implemented and ensure the Authority is in full compliance with existing applicable laws and regulations.

The Administration Department is requesting the Board review and approve the new procurement policy.

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: _____ **Project No.:** _____
Project Description: 2024 ECWA PROCUREMENT POLICY

Item Description:





- | | | | |
|---|--|---|---------------------------------------|
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input checked="" type="checkbox"/> Other <u>New ECWA procurement policy -2024 adoption</u> | | | |

Action Requested:

- | | |
|--|--|
| <input type="checkbox"/> Board Authorization to Execute | <input type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input checked="" type="checkbox"/> Other <u>Resolution & Adoption of the new procurement policy</u> | |

Approvals Needed:

APPROVED AS TO CONTENT:

- | | | |
|--|--|-------------------------|
| <input type="checkbox"/> Other (if Applicable) | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Operating Officer |  | Date: <u>01/09/2024</u> |
| <input type="checkbox"/> Executive Engineer | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Director of Administration |  | Date: <u>01/08/2024</u> |
| <input type="checkbox"/> Risk Manager | _____ | Date: _____ |
| <input checked="" type="checkbox"/> Chief Financial Officer |  | Date: <u>01/08/2024</u> |
| <input checked="" type="checkbox"/> Legal |  | Date: <u>1/8/2024</u> |

APPROVED FOR BOARD RESOLUTION:

- | | | |
|--|---|-----------------------|
| <input checked="" type="checkbox"/> Secretary to the Authority |  | Date: <u>1-9-2024</u> |
|--|---|-----------------------|

Remarks: Final revisions reviewed and modified for completion

Resolution Date: _____ **Item No:** _____

ERIE COUNTY WATER AUTHORITY

THE MISSION OF THE ERIE COUNTY WATER AUTHORITY IS TO PROVIDE ALL OF ITS CUSTOMERS A PLENTIFUL SUPPLY OF SAFE, HIGH QUALITY AND AFFORDABLE DRINKING WATER THROUGH A RELIABLE INFRASTRUCTURE.



PROCUREMENT POLICY

ADOPTED AND APPROVED BY
THE ERIE COUNTY WATER AUTHORITY
BOARD OF COMMISSIONERS
ON JANUARY 18, 2024

295 MAIN STREET SUITE 350
BUFFALO, NY 14203

INTRODUCTION

The Erie County Water Authority (the “Authority”) is a local public benefit corporation created by a special act of the New York State Legislature, codified as Article 5, Title 3, of the Public Authorities Law (the “Enabling Statute”). The Authority’s mission is to provide customers with a plentiful supply of safe, high quality, and affordable drinking water through reliable infrastructure. The Authority operates as a self-sustaining business enterprise and pays for all operating expenses out of revenues generated from the sale of water to its residential, commercial, and municipal customers.

Statement of Purpose & Scope

The Authority actively solicits competition for all procurements, unless otherwise specified in this Policy. By promoting the competitive securing of goods and services, the Authority seeks to ensure the prudent and economic use of public monies in the best interest of the public, its customers, and its bondholders. The Authority seeks to facilitate the acquisition of goods and services of maximum quality at the lowest possible price.

In enacting this Procurement Policy, the Authority intends to guard against favoritism, extravagance, fraud, and corruption. Wherever possible within existing laws, the Authority seeks to promote and support local businesses and industry. The Authority intends for the adoption of this Procurement Policy to foster a greater degree of public accountability of the Authority’s personnel and others involved in the procurement process to provide assurance to its customers and the public that the Authority’s procurements are in their best interests.

The Procurement Policy governs the procurement of goods and services for use by the Authority. The Department of Administration and the Central Purchasing Unit will enforce this policy and supervise its implementation. Authority personnel are directed to comply with the Procurement Policy. Authority personnel shall retain the necessary documentation as required in this Policy to substantiate compliance with it. The Procurement Policy will be posted on the Authority’s website.

The Procurement Policy shall be construed to promote compliance with all applicable laws and regulations, including the following:

1. The Enabling Statute (Public Authorities Law, Article 5, Title 3), as amended.
2. The Authority’s By-Laws, as amended.
3. The Authority’s Tariff, as amended.
4. Public Authorities Law, Article 9, as amended.
5. State Finance Law, Article 9, as amended.
6. Labor Law, Articles 8 and 9, as amended.

In the event of a conflict between the Procurement Policy and the requirements of any applicable law, the law will prevail.

Procedures for the Procurement of Goods and Services

The Authority formally adopts the following written policies applicable to all purchases of goods and services after January 18, 2024. These policies are meant to actively promote competitive procurement of all goods and services, with very limited exceptions, as set forth in this Procurement Policy. Authority personnel are directed to comply with these policies and to retain the necessary documentation as required in this Procurement Policy to substantiate such compliance.

Procurement Authority and Responsibility

The Central Purchasing unit is charged with the responsibility to procure materials, supplies, equipment, and services as needed by the Authority in pursuing its mission. All such purchases shall be made in accordance with the New York State Finance Law, the Enabling Statute, and this Procurement Policy.

The Board of Commissioners designates the Director of Administration as the Authority's Procurement Officer. The Procurement Officer is directed and authorized to do the following:

- A. Create purchase orders on behalf of the Authority for the acquisition of supplies, materials, equipment, and services necessary to support the functions of the Authority in accordance with this Procurement Policy.
- B. Prepare and recommend revisions and amendments to the Procurement Policy and submit them periodically to the Board for approval.
- C. Develop and implement written procedures and forms to ensure compliance with the Procurement Policy within ninety (90) days of adoption of this Procurement Policy and update such procedures and forms as necessary.
- D. Supervise the receipt and inspection of all materials, supplies, equipment, and services purchased to ensure conformance with specifications.
- E. Recommend the disposition of surplus and unused supplies, materials, equipment, and scrap through sale or other means. Maintain necessary records for the efficient operation of Central Purchasing.
- F. Develop a purchasing schedule for Invitations to Bid and Requests for Proposals.

The Central Purchasing unit shall perform the following functions:

- A. Analyze purchase orders from Authority departments to ensure the proper authorizations are present, and that the procurement is tailored to meet the Authority's

needs and is not unnecessary nor duplicative. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

- B. Assist Department Heads in the preparation of invitations for bids, requests for proposals, informal solicitations and notices of procurement opportunities, as needed.
- C. Remain current and in compliance with applicable federal, State and local laws.
- D. Maintain vendor files.
- E. Maintain all supporting documentation including small purchase procurement authorizations, sole source documentation, single source documentation, and quotations.

POLICY

ARTICLE 1. BOARD APPROVAL OF CONTRACTS AND AUTHORIZATION FOR THE APPROVAL OF CERTAIN CONTRACTS ADVERTISEMENT OF BIDS AND THE SOLICITATION OF REQUESTS FOR PROPOSALS OR INFORMATION

Board approval is required for all contracts requiring execution by the Chairman of the Board, including:

- A. Any construction-related contract for goods, equipment or services with an actual or estimated value of Thirty-Five Thousand Dollars (\$35,000) or more; and
- B. Any other contract for goods, equipment, or services with an actual or estimated value of Twenty Thousand Dollars (\$20,000) or more; and
- C. Any Authority contract where performance will continue for a period in excess of one (1) year.

The Board delegates and vests the power and duty to sign and execute any construction-related contracts for goods, equipment or services with an actual or estimated value of less than \$35,000 where performance will be completed in a period of one year or less to the Chief Operating Officer and the Executive Engineer.

The Board delegates and vests the power and duty to sign and execute any other contract for goods, equipment or services with an actual or estimated value of less than \$20,000 where performance will be completed in period of one year or less to the Director of Administration.

The Board delegates and vests the power and duty to authorize the advertisement of bid notices, the solicitation of requests for proposals, and the solicitation of requests for information to the Authority's Executive Staff, consisting of the Secretary to the Authority, the Chief Financial Officer, the Chief Operating Officer, the General Counsel and the Executive Engineer, along with the Director of Administration and the Claims Representative/Risk Manager. The Executive Staff has the duty to report to the Board at each of its meetings all advertisements of bid notices, solicitations of requests for proposals and solicitations of requests for information that have been posted to the Authority's website since the prior Board meeting.

ARTICLE 2. PURCHASES FOR GOODS, EQUIPMENT AND SERVICES RELATED TO CONSTRUCTION

Pursuant to the Enabling Statute, all contracts related to construction with a value over \$35,000 must be awarded pursuant to a Resolution of the Authority's Board of Commissioners. The Authority must issue an invitation for sealed bids for contracts for work, materials or supplies related to construction. The Authority must issue a request for sealed proposals for professional service contracts for consulting engineers on construction projects.

The Authority complies with the New York State Department of Labor's prevailing wage requirements on all contracts for public works.

The Authority complies with the requirements of General Municipal Law § 101 for all contracts for public works in excess of \$500,000.

All sealed bids shall be publicly opened by Authority personnel designated by the Authority's Board of Commissioners. All sealed bids shall be awarded to the lowest responsible, responsive bidder pursuant to the criteria under Articles 14 and 15 regarding bid openings. All sealed proposals shall be awarded pursuant to the criteria under Article 16 regarding opening of proposals.

The Authority has the exclusive right to declare a bid rejected in its discretion. The Authority maintains a right to declare a bidder's bid security forfeited if: (1) the bidder neglects or refuses to accept the Authority's contract within five (5) business days after written notification of an award of the contract, or (2) if the bidder fails to give proper security as required by the contract within five (5) business days after written notification of an award of the contract.

Contracts related to construction involving an annual expenditure up to \$34,999, may be awarded to the lowest bidder after receiving three written quotations (informal quotes). The Director of Administration shall review all quotations prior to a purchase. In all instances where practicable, the Director of Administration shall retain copies of such quotes for a period of not less than six (6) years. In any instance where less than three written quotes have been obtained, the Director of Administration shall ensure the circumstances underlying the purchase are documented in a memorandum maintained in the purchasing system.

The Authority reserves the right to not award any contract to a person or corporation who is in arrears to the Authority, in litigation or potential litigation with the Authority, or in a fee dispute with the Authority.

All contracts shall be executed in triplicate with two originals to be held by the Authority and one original to be delivered to the contractor.

ARTICLE 3. PURCHASES FOR GOODS, EQUIPMENT AND SERVICES NOT RELATED TO CONSTRUCTION

All purchases for goods, equipment, and services which will involve an annual expenditure of \$20,000 or greater shall be awarded after an invitation for sealed bids has been issued. All such sealed bids shall be awarded to the lowest responsible, responsive bidder pursuant to the criteria under Articles 14 and 15 regarding bid openings. In any instance where a purchase contract is awarded on the basis of best value as opposed to lowest bid, the Board shall adopt a resolution allowing the use of best value for such purchase prior to the award of the contract.

Purchases for goods, equipment or services involving an annual expenditure up to \$19,999, may be awarded to the lowest bidder after receiving three written quotations (informal quotes). The Director of Administration shall review all quotations prior to a purchase. In all instances where practicable, the Director of Administration shall retain copies of such quotes for a period of not

less than six (6) years. In any instance where less than three written quotes have been obtained, the Director of Administration shall ensure the circumstances underlying the purchase are documented in a memorandum maintained in the purchasing system.

The Authority reserves the right to not award any contract to a person or corporation who is in arrears to the Authority, in litigation or potential litigation with the Authority, or in a fee dispute with the Authority.

All contracts shall be executed in triplicate with two originals to be held by the Authority and one original to be delivered to the contractor.

ARTICLE 4. SMALL PURCHASES FOR GOODS, EQUIPMENT AND SERVICES

Small purchases for goods, equipment and services involving an expenditure less than \$1,000 per vendor may be made with the approval of a Department Head. A verbal or written quotation must be received for such purchase. If the purchase will reoccur for a period greater than a year, the purchase may only be made after receipt of three written quotations. Authority personnel may not break down small purchases into multiple purchases (commonly called “bid splitting”) merely to permit use of the small purchase procedures or to avoid the requirements that apply to purchases above the small purchase threshold. In all instances where practicable, the Procurement Officer shall retain copies of all quotes related to small purchases for a period of not less than two years.

Petty cash reimbursement may be requested for incidental expenses of \$30 or lower with the approval of a Department Head. Petty cash should only be used for incidental expenses personally incurred by an employee on behalf of the Authority such as tolls, postage, and parking.

ARTICLE 5. PROFESSIONAL SERVICE CONTRACTS

Professional services are those which require a State license to practice, special skills and training (i.e., creative, technological), or those which require professional methods, character or standards. Professional services shall be procured after the Authority issues a Request for Proposals (“RFP”) and the proposals have been reviewed by Authority personnel in accordance with Article 16 of this Policy. The Request for Proposal shall be issued to three or more firms. The RFP shall define the scope of work, required qualifications, deliverables, and shall request a proposed fee for the services, as well as an estimated time frame for completion of the scope of work. The proposed fee shall include, as is relevant to the scope of work, any lump sum costs as set for in the RFP, direct labor costs, hourly billing rates and relevant estimated indirect costs.

It is the policy of the Authority to negotiate professional services contracts based on demonstrated competence and qualifications for the type of professional services required at fair and reasonable fees. As set forth in Article 16, a review committee of at least three Authority personnel will review all proposals and shall select the firm most qualified to provide the requested services at a fee which has been deemed fair and reasonable. Such Authority personnel shall consider all factors set forth in the proposals in determining the qualifications of a firm, including the estimated value of the services, the qualifications of the firm, the complexity of the project, and the cost.

In negotiating the professional services contract, Authority personnel shall consider lump sum fees, hourly labor billing rates, direct labor costs, and allowable indirect costs as applicable to a particular contract. Professional service contracts may include retainer type agreements where the selected firm provides services to the Authority upon approval of Authority personnel within a general scope of services and at previously set billing rates.

ARTICLE 6. LEASE AGREEMENTS

Prior to entering into any lease agreement, Authority personnel shall perform an analysis regarding costs comparing a lease to a purchase. This analysis shall be reviewed with the Comptroller. Lease agreements must be executed by the Chairman pursuant to a Board resolution.

Leases of equipment shall be awarded after a competitive process. The Authority shall obtain, whenever possible, written quotations or proposals from three or more vendors for any lease in excess of \$1,000 annually. Such written quotations or proposals must provide details as to the equipment to be provided, and cost, on an annual and total lease basis. The lease shall include details as to additional cost beyond the base lease amount necessary to properly evaluate the equipment to be leased prior to award to the successful vendor. For leases involving an annual total lease expense of less than \$1,000.00, Authority personnel shall secure at least three informal quotes, whenever possible, and perform the same evaluation before making a recommendation to the Procurement Officer relative to the selection of a lessor for the equipment to be leased. All lease agreements shall be approved by the Board and executed by the Chairman

Real property leases do not require a competitive process. A real property lease agreement shall be no more than five (5) years. However, nothing in this section shall prohibit the lease from including provisions, terms, or conditions upon which the lease may be renewed for an additional period of time, at the option of the Board of Commissioners.

ARTICLE 7. REPAIR AND MAINTENANCE CONTRACTS

All repair and maintenance contracts shall be reviewed by the Procurement Officer. All contracts for repair and maintenance must be executed in the manner set forth in Article 1 of this Procurement Policy.

Repair and maintenance contracts include contracts for “per call” services where equipment is serviced upon request and service contracts which include preventative annual maintenance. If the estimated value of the repair and maintenance contract is for more than \$20,000, the Authority shall issue an invitation for sealed bid for the services; if the estimated value for the contract is between \$1,000 and \$20,000, the Authority shall obtain written quotations from at least three vendors; if the estimated value for the contract is less than \$1,000, the Authority shall obtain, where possible, three verbal quotes.

Repair and maintenance services provided by the original equipment manufacturer, supplier or installer may be exempt from the quoting aspect of this policy if their services are required due to

a specific or proprietary type of equipment that would qualify the services to be procured as a single or sole source pursuant Articles 8 or 9 of this Policy.

ARTICLE 8. SINGLE SOURCE PROCUREMENTS

When the Authority has determined that it is in the best interests of the Authority to procure goods, equipment, or services from a particular vendor even though there may be several potential vendors of the commodity or service, the Authority may use single source procurement. Equipment standardization, or compatibility with existing equipment, inventory or services may form the basis to recommend a single source procurement. The Procurement Officer will review all requests for single source purchases. Requests should be accompanied by an explanation as to why no other supplier will be suitable or acceptable to meet the needs of the Authority, the steps used in selecting the single source vendor, the rationale for selecting the vendor, and a review of the reasonableness of the costs. The Board shall review and approve all single source purchases with an annual expenditure in excess of \$20,000.

The Authority's Procurement Officer has reviewed documentation justifying certain potential single source vendors of goods, equipment and services and has recommended the Authority approve purchases of goods, equipment, or services from these vendors as standardized, single source procurements. Upon the adoption of this Policy, the Board of Commissioners will review such recommendations and shall approve a resolution adopting vendors from the Procurement Officer's recommendations as standardized, single source procurements as the Board deems appropriate. The list of such Board approved vendors shall be attached to this Policy as Appendix A. Upon the annual re-adoption of this Procurement Policy, the Authority's Procurement Officer shall provide the Board with updated recommendations and the Board shall review such recommendations and approve a new resolution adopting the vendors as the Board deems appropriate. Upon the adoption of a new resolution, the list of such Board approved vendors shall be attached to this Policy as Appendix A.

ARTICLE 9. SOLE SOURCE PROCUREMENTS

When only one source can provide a particular good, piece of equipment or service, such procurement is defined as sole source. Sole source procurements include sole providers of a licensed or patented good or service, sole providers of a factory-authorized warranty service, items manufactured by a single manufacturer, or exclusive distributors. The Procurement Officer will review all requests for sole source purchases. Requests should be accompanied by a Sole Source Justification Form, a letter from the manufacturer confirming that the product is a sole source item, and a quote for the purchase. The Board shall review and approve all sole source purchases with an annual expenditure in excess of \$20,000.

ARTICLE 10. EMERGENCY PURCHASES

Emergency purchases may be allowed in cases where a genuine emergency or necessity for immediate action exists. Notwithstanding any of the other provisions in this policy, in the case of (1) a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting Authority buildings, property, water lines, or the life, health,

safety or property of Authority employees, customers or the general public; and/or (2) the prospect of interruption of water service to a community due to an unforeseen circumstance; and/or (3) the disruption of the efficient operation of the Authority arising from an unforeseen circumstance requires immediate action which cannot await a competitive process or competitive bidding, the Authority may enter into contracts for public work or the purchase of supplies, materials, equipment or services.

Declarations of Emergency shall be documented in writing. A declaration may be approved by any **two (2) of the following individuals**: Commissioners, Division Heads, Executive Engineer or Director of Administration.

Documentation and justification of a Declaration of Emergency shall be provided to the Procurement Officer prior to any purchase under such Declaration.

In any emergency procurement, the quantity to be purchased should only be that necessary to meet the circumstance. If time, nature of the requirements, and other circumstances permit, verbal or written price quotations should be obtained from more than one potential source. All purchases under a Declaration of Emergency must be made with thirty (30) days of the Declaration of Emergency.

All emergency purchases shall be reported to the Board as a Staff Item at the next Board meeting following the purchase.

ARTICLE 11. STATE AND COUNTY CONTRACTS

Notwithstanding the provisions of this policy, the Authority has determined that prices from the State Office of General Services contracts and County contracts are deemed competitive prices and the Authority is authorized to make purchases of materials, equipment, or supplies, when available, utilizing the State's or County's existing, current contracts.

In the event that the Authority advertised for and opened bids (formally or informally), but it is then determined that purchasing an item offered on a State or County contract would be the best interests of the Authority, the bids shall be rejected, and the purchase shall be made using the State or County contract.

Surplus and second-hand supplies, materials or equipment may be purchased from the federal government, the State, or any political subdivision, district or public benefit corporation within the State without the requirement for competitive bidding.

ARTICLE 12. ALLIANCE PURCHASING (PIGGYBACK) CONTRACTS

Contracts for procurement of goods or professional services, for which a national purchasing consortium has competitively bid and awarded by the United States or any agency thereof, any state or any other public subdivision, can be used in lieu of requests for quotations and formal bidding on non-construction procurements where it can be shown that the contract was let to the

lowest responsible bidder and made available for use by other governmental entities. Participation in purchasing alliances is at the discretion of the Board.

ARTICLE 13. PREFERRED SOURCE PROCUREMENTS

Notwithstanding the provisions of this policy, the Authority has determined that prices from New York State preferred sources are deemed competitive prices and the Authority is authorized to make purchases of materials, equipment, supplies or services, when available, from a preferred source.

In the event that the Authority advertised for and opened bids (formally or informally), but it is then determined that purchasing an item offered by a preferred source would be in the best interests of the Authority, the bids shall be rejected, and the purchase shall be made from the preferred source.

ARTICLE 14. ADVERTISEMENT AND OPENING OF BIDS

Advertisements for bids shall be published in any of the following: the New York State Contract Reporter, the Dodge Report, Construction Exchange, Buffalo Business First, the Buffalo News and/or such other appropriate publication. The advertisement shall contain a statement of the time when, and place where all bids received, pursuant to such notice, will be publicly opened and read. The Authority encourages its personnel to take all such additional measures as possible to maximize the response to the bid invitation, including broad direct solicitation by letter and telephone and notice to additional public listings.

As set forth in Article 1, a formal resolution is not required prior to advertisement of a bid notice.

In accordance with State Finance Law §139-j and §139-k, all questions about meaning or intent of the bidding documents shall be submitted to the designated contact person in writing.

Bid openings for contracts are conducted by the Secretary to the Authority, or his representative, at 3030 Union Rd, Cheektowaga, NY 14227 or designated location at the specified time and day. Each bid shall be accompanied by a certified check or bid bond in the amount of five percent (5%) of the amount of the bid. All bids received shall be publicly opened and read at the time and place so specified. At least five days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of the bids.

ARTICLE 15. REJECTION OF BIDS

The Erie County Water Authority reserves the right to reject any and all bids or to accept any bid deemed to be for the best interests of the Authority even though the bid chosen may result in the award of the contract to a bidder whose bid is not mathematically lowest.

In the event the Authority reviews the bids and decides to reject the bids, the bidders will then be notified of the rejection and the necessary steps will be taken to return their bid security (whether

in the form of a bid bond or certified check). Upon written request, bidders, or offerors whose bid or proposal has been rejected shall be advised of the reasons for rejection.

In evaluating the responsiveness of an apparent low bidder, the Authority may consider the following factors:

1. Has all required information been provided?
2. Does the bid contain mistakes?
3. Has the bidder failed to commit to a firm price?
4. Are there unacceptable qualifications or conditions tied to the bid?
5. Has the bid been prepared in accordance with the bidding instructions?
6. Are unacceptable provisions included in the bid?
7. Has the bidder altered or limited any of the contract or solicitation provisions?
8. Has the bidder offered non-conforming products or services?
9. Has the bidder failed to acknowledge addendums to the invitation to bid issued by the Authority?

The foregoing list is not exhaustive. Minor deviations which are immaterial and do not affect quantity, quality or delivery may be waived by the Authority if such waiver does not prejudice or affect the relative standing of bidders.

In evaluating the responsibility of an apparent low bidder, the Authority may consider, among other factors, whether the bidders' records with the Authority or other owners includes or demonstrates:

1. Being listed on a Federal or State debarred contractors list.
2. Poor prior performance on an Authority contract.
3. Lack of adequate expertise; prior experience with comparable projects; or financial resources to perform the work outlined in a timely, competent, and acceptable manner. Evidence of such factors may include failure to submit satisfactory evidence of insurance, surety bonds, or financial responsibility, or a history of terminations for cause.
4. Engagement in criminal conduct in connection with any other government contract or the conduct of business activity that involves such crimes as extortion, racketeering, bribery, fraud, bid-rigging, and embezzlement.

5. Grave disregard for the safety of employees, Authority personnel, or members of the public.
6. Willful noncompliance with the State's Labor Law requirements regarding prevailing wages and supplemental benefits, including consideration of any pending violations.
7. Disregard for other State Labor Laws, including child labor, proper and timely wage payments, and unemployment insurance laws.
8. Violation of the State Workers' Compensation Law, including failure to provide proof of proper workers' compensation or disability coverage.
9. Violations of the State's Environmental Conservation Law or violations of any other Federal or State environmental statutes.
10. Failure to abide by State and Federal statutes and regulations regarding efforts to solicit and utilize disadvantaged, minority, and women-owned business enterprises as potential subcontractors.
11. Submission of a bid which is mathematically or materially unbalanced.
12. Submission of a bid which is so much lower than the Authority's confidential engineers estimate that it appears unlikely that the contractor will be able to complete the project satisfactorily at the price bid.
13. The presentation of false or misleading statements or any other issue that raises serious questions about the responsibility of the bidder.

ARTICLE 16. REQUESTS FOR PROPOSALS

A Request for Proposal (RFP) is used when goods and services are complex, do not have standardized specifications, and where price is not the only determining factor. An RFP is the best source of competition when obtaining professional services. Professional services include services rendered by attorneys, engineers, insurance companies and certain other services requiring specialized or technical skills, expertise or knowledge. Circumstances which may dictate the use of an RFP include:

- A. Multiple solutions are available that will fit the need.
- B. Multiple suppliers can provide the same solution.
- C. There is a requirement to determine the "best value" of the suppliers' available solutions.
- D. Products/services for the project cannot be clearly specified.

- E. Different skills, expertise and technical capabilities are required from the consultants.
- F. Price is not the determining criterion for awarding the contract. When reviewing RFPs, project approach and understanding, firm experience, and individual experience shall take precedence.

As set forth in Article 1, a formal resolution is not required prior to issuance of an RFP.

Upon receipt of all proposals, a review committee shall be set up to include at least three employees of the Authority to review all proposals. After proposals are received, evaluated and terms negotiated, the contract(s) can be awarded to the supplier(s) presenting the best combination of price, delivery, compliance to specifications, capacity to perform, and quality of service. A recommendation to award shall be presented to the Board for final approval and execution of contract.

ARTICLE 17. REQUESTS FOR INFORMATION

A Request for Information (RFI) is a method of soliciting information from different suppliers prior to formally sourcing products or services. It is normally used where there are many potential suppliers and not enough information is known about them. It is a structured process where an extensive list of potential suppliers can be reduced to a concise list of those organizations that are willing and able to fulfill the Authority’s requirements.

As set forth in Article 1, a formal resolution is not required prior to issuance of an RFI.

ARTICLE 18. REQUESTS FOR QUOTES/INFORMAL QUOTATIONS

A Request for Quotes (“RFQ”) is a written request for quotes that is emailed or mailed. There is no public reading of bids or quotations. Bids or quotations are tabulated in Central Purchasing. Items are to be purchased at the lowest cost consistent with the quality and service required. If the bids are tied, the location of the product and delivery time of the product will be considered. RFQs may be used for procurements of under \$20,000 or for procurements of under \$35,000 for construction contracts. The RFQ must be issued to at least three potential vendors, and in all instances where practicable, at least three quotes should be obtained for the services or goods to be purchased. The Procurement Officer shall retain copies of all quotations for a period of not less than six (6) years.

ARTICLE 19. QUOTATION PROCESS

Documentation of quotations is required. Written or verbal quotations shall be documented on or attached to existing Authority forms. Bid or quote solicitations must provide, where applicable, that shipping, handling, and other ancillary charges are included in bids. Quotes and proposals must be considered in determining the lowest responsible and responsive provider.

ARTICLE 20. EXPENSES NOT SUBJECT TO NEGOTIATION

The Authority recognizes that prompt payment of invoices for utilities, including, but not limited to, electrical, telephone, cellular, natural gas, governmental fees of any sort, legal notice publications, postage, and delivery services is important and represents a good business practice. The fees for such services are not subject to negotiation. The Authority may make such payment upon receipt of an invoice for the same without Board approval, provided that the cumulative dollar amount for such purchases for the year is within the amounts budgeted and approved by the Board.

The Board delegates and vests the power and duty to make payments for these services upon receipt of an invoice for the same without further Board action to the Comptroller and the Director of Administration.

ARTICLE 21. STATEMENT OF NON-COLLUSION REGARDING BIDS AND PROPOSALS

Every sealed bid to provide work, services or equipment to the Authority shall contain a detailed statement subscribed by the bidder or proposer, under penalty of perjury, certifying that the prices were arrived at independently without collusion, consultation, communication or agreement; that the prices have not been disclosed and will not knowingly be disclosed by the bidder prior to the opening; and that no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. No contract shall be awarded where the statement of non-collusion required herein is not properly completed and submitted with the bid or proposal.

ARTICLE 22. PROCUREMENT COMPLIANCE REQUIREMENTS

All Authority procurements are subject to the restrictions on contacts during the procurement process set forth in State Finance Law § 139-j, as well as the disclosure of contacts and the responsibility of offerors set forth in State Finance Law § 139-k.

The Authority's Board members, officers, and employees shall conduct themselves at all times in accordance with the Authority's Code of Ethics and Conflicts of Interest Policy, as amended.

ARTICLE 23. PERFORMANCE SECURITY AND BONDING REQUIREMENTS

- A. Bid Security: All formal bids for construction contracts shall require bid security equal to five percent (5%) of the total bid price in the form of a bid bond or a certified check. Bid security may be required for product contracts at the discretion of the Procurement Officer in consultation with the General Counsel and Chief Financial Officer.
- B. Performance Bond: All construction contracts shall require a performance bond guaranteeing the contractor's faithful performance equal to the contract amount. The Performance Bond shall remain in full force and effect for the duration of the contract and for two full years after final acceptance of the project. Performance security may be

required for product contracts at the discretion of the Procurement Officer in consultation with the General Counsel and Chief Financial Officer.

- C. Payment Bond: All construction contracts shall require Payment Bonds in an amount equal to the contract amount which shall remain in full force and effect for the duration of the contract and for a period of one year following final acceptance of the contract.

ARTICLE 24. INSURANCE

Contracts, Invitations to Bid, and Requests for Proposals shall require bidders/contractors to obtain insurance on behalf of the Authority as a condition of doing business with the Authority. All vendors and contractors are required to meet New York State's requirements for appropriate Workers' Compensation and Disability Coverage. Prior to issuing an Invitation to Bid or Request for Proposals, the Authority's Claims Representative/Risk Manager shall review and approve the insurance requirements. Additionally, prior to entering into any contract the Claims Representative/Risk Manager shall review and approve compliance with the insurance requirements.

ARTICLE 25. SUPPORT FOR MINORITY, WOMEN-OWNED, AND SMALL BUSINESSES

The Authority supports contracts with minority, women-owned, and small businesses when awarding contracts in purchasing goods, services, and equipment. The Authority will not discriminate against any person who is qualified and available to perform the work by reason of race, color, creed, gender, or national origin. The Authority will encourage active participation by women-owned, minority-owned, and small businesses in its procurement process and will fully support equal opportunity and fair treatment of all people in its contracting-

It is the desire of the Authority to promote and assist participation by MBE's and WBE's and facilitate a fair share of the awarding of contracts and bids. The Authority aims to solicit proposals from NYS-certified MWBE's that are qualified to perform the required work. Construction contracts in excess of \$100,000 must meet a 10% minimum MWBE contractor participation. Such bidders' failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award.

ARTICLE 26. ANNUAL REVIEW

The Board shall annually review and re-adopt this Policy at its Annual Meeting in April. The Procurement Officer shall be responsible for assisting the Authority in conducting an annual review of this Procurement Policy, for an evaluation of the internal control structure established to ensure compliance with this Procurement Policy and for reviewing and recommending standardized, single source vendors for Board consideration annually.

APPENDIX A

PROPOSED STANDARDIZED SINGLE SOURCE VENDORS

Adopted: _____

VENDOR	PRODUCT
Automatech, Inc. (V3238)	General Electric iFix (SCADA) Software Maintenance, Support & Professional Services
Ayyeka, Inc. (V4425)	Wavelet Pressure Data Logger
Azteca Systems, Inc. (V3409)	Cityworks-related Services
Curtis Power Solutions, LLC (V4303)	Parts and Service for MTU Generators
Eaton Corporation (V5187)	Three Phase Uninterruptable Power Supply Service & Support
Environmental Systems Research Institute, Inc. (ESRI) (V5102)	Geographical Information System (GIS) Software Service, Licensing, Maintenance & Support
ESC Environmental (V2474)	Grundfos Chemical Metering Pumps
Everett J. Prescott, Inc. (V4121)	American Darling Hydrants, Waterous Valves & Repair Parts
Gutermann, Inc. (V5597)	Acoustic Leak Detection Loggers
Hach Company (V0934)	Process & Optimization Controller Buffer Solutions, Sensors, Probes, Etc. for Water Quality Instrumentation Equipment Maintenance & Calibration Services
Idexx Distribution, Inc. (V5822)	Colilert Media & Associated Equipment/Consumables
Innomotics, LLC (V4364) f/k/a Siemens Industry, Inc. (V8179)	Variable Frequency Drives used at Sturgeon Point Water Treatment Plant, Van de Water Raw Water & Ball Pump Station
Kenworth Northeast Group, Inc. (V6205)	Parts & Service for Kenworth Class 7 & 8 Vehicles
Kinsley Group, Inc. (V6190)	Parts & Service for Kohler Generators

Lenovo Global Technology (United States) (V6486)	Licensing & Maintenance on Servers at Ellicott Square & Service Center
Microsoft Corporation (V6966)	Microsoft Azure Cloud Hosted Services for Cityworks, ADFS & GIS
Milton Cat (V4908)	Parts & Service for Caterpillar Generators
Moley Magnetics, Inc. (V2794)	Mechanical Seals
Neptune Technology Group, Inc. (V1403)	Water Meters and Repair Parts
Regional International of WNY, Inc. (V7133)	Parts & Service for International Class 7 Heavy Duty Vehicles
RITEC Enterprises (V5055)	ATI Chlorine Residual & pH Analyzers
Rosemount, Inc. (V5042)	Instrumentation Devices at Treatment Plants, Pump Stations & Tanks
Ross Valve Manufacturing Co., Inc. (V1671)	Repair Kits & Replacement Parts for Control & Pressure Valves
Schweitzer Engineering Laboratories, Inc.	Materials for Conversion of SEL-3332 Intelligent Server Computer and two SEL- 2032 Communications Processors at Sturgeon Point Water Treatment Plant
Securitas Technology Corporation (V0287)	Door Access & Security Systems
SEL Engineering Services, Inc.	Electrical Engineering Services for Real Time Automation Controller Upgrade
T. Mina Supply, Inc. (V6767)	A.P. Smith Hydrants & Repair Parts
Thomson Reuters - West (V2113)	Westlaw Legal Research Service
TI-Sales, Inc. (V8480)	AVK Hydrants & Repair Parts
Toshiba International Corp. (V2738)	Variable Frequency Drives at Van de Water Water Treatment Plant
Trimble, Inc. (V2709)	Telog Transient Pressure Monitors
Watson Marlow, Inc. (V8322)	Peristaltic Chemical Feed Pump Replacement Elements
Xylem, Inc. (V5554)	Dewatering Pump Rentals & Service
Yokogawa Fluid Imaging Technologies, Inc. (V0781)	FlowCam Instruments & Parts