

MEMORANDUM

TO: Board of Directors, Buffalo Erie Niagara Land Improvement Corporation

FROM: Brendan Mehaffy, Chairperson

SUBJECT: **Resolution #2023-2** Approval to Amend Procurement Policy

DATE: January 19th, 2023

DISCUSSION:

The BENLIC Board of Directors regularly reviews policies to reflect best practices and day to day operations for BENLIC staff. Staff requests to Amend BENLIC's Procurement Policy to increase the minimum needed for Board Approval in the Solicitation Procedures for the Purchase of Commodities, Equipment, Goods or Construction, Demolition, Renovation and Reconstruction from \$10,000 to \$35,000. Given the realities of post-COVID-19 increases in the cost of construction goods and services, and the need to move quickly to stabilize and preserve properties, this increase will allow for quick execution of construction contracts under \$35,000. Roofing contracts are typically over \$25,000.

BENLIC amended its Procurement Policy in May of 2020 via Resolution #2020-18.

ACTION:

The Board of Directors is hereby requested to approve the following resolution:

RESOLVED, that the BENLIC Board of Directors approves the amendment of the Procurement Policy as attached hereto and made a part hereof; and be it further,

RESOLVED, that this Resolution shall take effect immediately.

BUFFALO ERIE NIAGARA LAND IMPROVEMENT CORPORATION

PROCUREMENT POLICY

A. Introduction.

1. **Applicability** - This Procurement Policy (“Policy”) shall apply to the Buffalo Erie Niagara Land Improvement Corporation (“the Corporation”).
2. **Scope** - 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** - The primary objectives of this Policy are to assure the prudent and economical use of public monies in the best interests of the Corporation, 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. The Corporation may, in its discretion, assign contracts for supervision and coordination to the successful bidder or proposer for any subdivision of work. Contracts awarded by the Corporation shall contain such other terms and conditions as the Corporation may deem desirable.
2. **Solicitation Procedures for the Purchase of Commodities, Equipment, Goods or Construction, Demolition, Renovation and Reconstruction Services.**
 - a. Up to \$5,000 per instance – a contract may be awarded and executed in the discretion of the Chairperson or Executive Director of the Corporation or authorized designee.
 - b. Greater than \$5,000 to \$10,000 per instance – Upon receipt of documented written/ fax/ email quotations from at least three (3) vendors, a contract may be awarded and executed in the discretion of the Executive Director, or, in the absence of the Executive Director, the Chair of the Land Bank, or in her/his absence, the authorized designee of the Chair.
 - c. Greater than \$10,000 to **\$35,000** per instance – Bid award to the lowest bidder who, in the opinion of the Executive Director, or, in the absence of the Executive Director, the Chair of the Land Bank, or in her/his absence, the authorized designee of the Chair, is qualified to perform the work required and who is responsible and reliable.
 - d. Greater than **\$35,000.00** per instance – Bid award to the lowest bidder who, in the opinion of the Corporation and approved by the Board, is qualified to perform the work required and who is responsible and reliable.
3. **Exceptions.** Alternative proposals or quotations shall not be required for procurements made through or with respect to:

- a. New York State, Erie County or participating Municipality Contracts – when the Corporation is able to procure commodities, equipment, goods or services through New York State, Erie County participating Municipality contracts, it is unnecessary to obtain quotations or bids;
 - b. Emergency Procurements – an emergency exists if the delay caused by soliciting quotes would endanger health, welfare, property or development opportunity. Approval of the Chairperson or Executive Director of the Corporation is necessary, which shall be documented and shall also include a description of the facts giving rise to the emergency;
 - c. 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;
 - d. Utilities and Affiliate Transactions – The purchase of utilities and inter-affiliate transactions are excepted from alternative proposal/quotation requirements;
 - e. Unavailability of three (3) vendors who are able or willing to provide a quote.
4. 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. The Corporation may reject any or all bids or waive any informality in a bid if it believes that the public interest will be promoted thereby. The Corporation may reject any bid, if, in its judgment, the business and technical organization, plant, resources, financial standing, or experience of the bidder justifies such rejection in view of the work to be performed. [NY N-PCL 1617]. In making any such determination, the Corporation shall 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 procurement.
- g Any procurement excepted from the alternative proposal/quotation requirements as set forth herein, and the procurement of professional services as set forth in this policy.

5. 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 Chairperson or 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. Erie County Businesses and Minority & Women Owned Enterprises.

It is the preference of the Corporation to provide opportunities for the purchase of goods and services from (i) business enterprises located in Erie County and (ii) certified minority and/or women-owned business enterprises. To that end, the Corporation will utilize available lists of MBE/WBE firms certified by Erie County and Buffalo Joint Certification Committee and/or the State of New York and will solicit quotes and proposals from such businesses by notifying them of opportunities to submit proposals and quotes for goods and services.

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.

E. Professional Services.

Contracts for professional services involve the application of specialized expertise, the use of professional judgment, or a high degree of creativity. Professional services include services which require special education and/or training, license to practice or are creative in nature. Examples include but are not limited to lawyers, accountants, and engineers. Furthermore, professional service contracts often involve a relationship of personal trust and confidence.

In the selection of a provider of Professional Services up to \$10,000 per instance, the discretion of the Chairperson or Executive Director of the Corporation or authorized designee.

In the selection of a provider of Professional Services which exceed \$10,000 the Corporation shall issue a request for proposals. The Corporation may exercise its discretion and apply its judgment with respect to any aspect of the RFP, the evaluation of proposals, and the negotiations and award of any contract. The Corporation may enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the proposals with one or more of the proposers. The Corporation may select the proposal that best satisfies the interests of the Corporation and not necessarily on the basis of price or any other single factor. The Corporation reserves the right to weigh its evaluation criteria in any manner it deems appropriate.

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. Unintentional Failure to Comply.

The unintentional failure to comply with the provisions of this policy shall not be grounds to void action taken or give rise to a cause of action against the Corporation or any officer thereof.

H. General Requirements.

- a. Regardless of the value of the Procurement Contract, any Procurement Contract involving services to be rendered over a period exceeding one year must be approved by resolution of the Board.
- b. The form of every Procurement Contract shall be approved by the Corporation's counsel prior to execution.
- c. Procurement Contracts which require contractors to perform services on premises owned or controlled by the Corporation shall require proof of Worker's Compensation and proof of liability insurance naming the Corporation as additional insured and shall provide that the contractor indemnifies the Corporation for the negligent acts and omissions of the contractor's employees. When appropriate and at the discretion of the Board, these contracts may further require the contractor to provide proof of environmental pollution insurance.