

ONONDAGA COUNTY WATER AUTHORITY PURCHASING POLICY

I. INTRODUCTION

The Onondaga County Water Authority (“OCWA”) was created as a public benefit corporation, pursuant to Public Authorities Law Article 5, Title 7, to carry out its purpose of benefiting the people of Onondaga County and State of New York, to supply and sell water for domestic, commercial and public purposes. Among the powers granted to OCWA under Public Authorities Law Section 1154 is the power to make contracts and to execute all necessary and convenient instruments to further OCWA’s stated public purpose. The only provision in OCWA’s enabling act which specifies a required procurement procedure is that found in Public Authorities Law Section 1166 which addresses “construction contracts”. In general, there are no statutory requirements for public authorities to competitively bid procurement contracts. While there are no statutory or common law requirements for a public benefit corporation to make purchases such as equipment purchases through public bidding, it has been the practice in the past and now it will be the formal policy of OCWA that it will actively solicit competition for such procurements. Whether competition is solicited pursuant to a formal competitive bidding process or a less formal method such as obtaining proposals or verbal or written quotations, will depend upon the nature of the particular purchase. In addition, it is understood that the Executive Director may, for cause, make exceptions and waive certain procedures outlined hereafter upon a record to be maintained. By promoting the competitive securing of goods and services, OCWA will assure the prudent and economic use of public monies in the best interests of the citizens of Onondaga County and State of New York, and will facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances. It is also the intention of this Policy to guard against favoritism, extravagance, fraud and corruption, and, wherever possible within existing laws, to promote and support local businesses and industry. The implementation of this voluntary purchasing policy will foster a greater degree of public accountability on the part of OCWA and those involved in the procurement process and will provide greater assurance that procurements will be based upon the best interests of the citizens of Onondaga County and State of New York.

II. PROCEDURE FOR THE PROCUREMENT OF GOODS AND SERVICES

OCWA hereby formally adopts the following written procedure (“procedure”) applicable to all purchases of goods and services after January 1, 2010. This procedure is meant to actively promote competitive procurements of all goods and services, with very limited exceptions, as set forth herein. OCWA staff is hereby directed to comply with this procedure and to retain the necessary documentation as required herein to substantiate such compliance. This procedure shall be included in the OCWA Employee Handbook along with the OCWA Purchasing Policy Statement related thereto.

A. CONSTRUCTION CONTRACTS

All contracts or orders for work, material or supplies performed or furnished in connection with construction costing in excess of \$10,000, shall be awarded pursuant to a Resolution of the OCWA Board. In any such construction contract, OCWA may provide a program for the payment of damages for delays and incentive awards in order to encourage timely project

completion. All such contracts for such public construction work shall be awarded by OCWA to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in a manner provided for herein under the heading "Advertising and Opening of Bids", unless the Authority shall determine that it is for the public interest that a bid other than the lowest responsible bid be accepted.

The bidder whose bid is accepted shall give security for the faithful performance of the contract, pursuant to the requirements and exceptions set forth in State Finance Law Section 137, and such other security as OCWA may require, and may be required to maintain any construction done under the contract for such period as shall be stipulated, all in the manner prescribed and required by OCWA. The sufficiency of such security shall, in addition to the justification and acknowledgement, be approved by OCWA's Executive Director. All bids and proposals shall be publicly opened by the OCWA Board or its duly authorized staff. If the bidder whose bid or proposal has been accepted after formal written notification shall neglect or refuse to accept the contract within ten working days after written notice that the contract has been awarded on the bid or proposal, or if he/she accepts but does not designate the contract and give proper security, OCWA shall have the right to declare his/her deposit forfeited.

No bid or proposal shall be accepted from or any contract awarded to, any person or corporation who is in arrears to OCWA upon any obligation of OCWA. Every contract when made and entered into, as herein provided for, shall be executed in duplicate, one copy which shall be held by OCWA and one copy which shall be delivered to the contractor.

B. PURCHASES OF GOODS, EQUIPMENT AND SERVICES (NOT INVOLVING CONSTRUCTION)

Except as otherwise expressly provided herein, Purchase Requisitions for goods, equipment and services by OCWA involving an expenditure on a reasonably anticipated annual basis of more than \$20,000.00, shall be made pursuant to an open competitive bidding process as set forth herein and shall be awarded to the lowest responsible bidder furnishing the security required by OCWA for the purchase after advertisement for sealed bids in the manner provided for by this procedure, unless the Authority shall determine that it is for the public interest that a bid other than the lowest responsible bid be accepted. In any case where a responsible bidder's gross price is reducible by an allowance for the value of used machinery, equipment apparatus or tools to be traded in by OCWA, the gross price shall be reduced by the amount of such allowance, for the purposes of determining the low bid. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, OCWA's Board may award the contract to any of such bidders. OCWA reserves its discretion to reject all bids and re-advertise for new bids in the manner provided for in this procedure.

Purchase Requisitions for goods, services or equipment over \$5,000.00 but less than \$20,000.00, the Executive Director or his/her designee shall obtain, whenever possible, three or more written quotes, whenever possible, and shall document and retain those quotes for a period of a least two years.

Purchase Requisitions for goods, services or equipment involving a total purchase price of less than \$5,000.00, but more than \$2,000.00, the Executive Director or his designee shall, whenever possible, seek to obtain at least three verbal or telephone quotes from different vendors and document the substance of those quotes (i.e. vendor name, date, time, contact person, including reasons for those not choosing to quote). For non-recurring small purchases, at levels of less than \$2,000.00, competitive quotes are not required. Contracts involving reconstruction or other repair activities otherwise not covered under "Construction Contracts" above shall be subject to the requirements set forth herein for purchase of goods, services and equipment.

In the event that the Executive Director or his/her designee are unable to obtain three or more written or verbal quotes, a memorandum to the file shall be prepared setting forth the circumstances surrounding the failure to obtain the three quotes.

C. PROFESSIONAL SERVICE CONTRACTS

Contracts which require professional methods, character or standards or required a State license to practice, or special skill and training or which may be creative, technological and specialized in nature, including computer hardware and software, are considered to be professional service contracts. These services, when a firm is initially retained to perform relative to a specified task or project, shall be procured pursuant to a competitive process as follows:

It is the policy of OCWA to negotiate professional services contracts on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable fees. In the procurement of professional services requiring special skill and training, OCWA's staff shall encourage any professional firms engaged in the lawful practice of the profession to submit a statement of qualifications and performance data. OCWA's staff shall evaluate the current statements of qualifications and performance data and request proposals from three or more, where possible, professional firms regarding the scope of work and proposed methods of approach to the assignment. The proposal shall, as OCWA's staff deems necessary for the project, specify the direct labor costs, the hourly billing rates in each labor category, the estimated time for each labor category and the indirect costs and lump sum proposals, if applicable. OCWA will select, in order of preference, based upon criteria established in the Request for Proposals, the professional firm deemed to be the most qualified to provide the services required. OCWA staff shall negotiate a contract with the most qualified professional firm for the professional services required at a compensation, which the OCWA deems to be fair and reasonable. In making this decision, OCWA will take into account the estimated value of the services to be rendered, including the cost, scope, complexity and professional nature thereof. The contract shall specify the factors deemed necessary by OCWA staff, including the allowable indirect costs, the direct labor costs and the hourly labor billing rates in any labor category for any professional firm selected to render services to OCWA and the determination of the reasonableness of cost shall include, among other things, the direct labor costs of the professional firm for such services, plus "allowable indirect costs". Such "allowable indirect costs" of a professional firm are defined as those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allocable within the profession.

OCWA may, subject to these provisions, contract with the professional service provider under a retainer type agreement which delegates to OCWA staff authority to approve specific work task assignments to be performed within a general scope of services. Should OCWA be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee OCWA determines to be fair and reasonable, negotiations with that professional firm shall be formally terminated. OCWA shall then undertake negotiations with the second most qualified professional firm. Failing accord with the second most qualified professional firm, OCWA shall formally terminate negotiations. OCWA shall then undertake negotiations with the third most qualified professional firm, and so forth, until it has selected the most qualified firm in order of competence and qualifications that will provide the services at a reasonable cost. OCWA will enter into an agreement based upon the condition set forth herein.

For procurements of professional services, related to legal and engineering services, OCWA shall use the respective adopted policies and procedures related thereto.

D. LEASE ARRANGEMENTS

Leases of equipment shall also be awarded after a competitive process. OCWA staff shall obtain, whenever possible, formal written quotations or proposals from three or more vendors for any lease involving in excess of \$5,000.00 annually. Such written quotations or proposals shall set forth the particulars as to the equipment to be provided and details as to cost, on an annual and total lease basis, which may be used for evaluation of the proposal. The lease shall also 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 \$5,000.00, OCWA staff shall secure at least three informal quotes, whenever possible, and perform the same evaluation before making a recommendation to the Executive Director relative to the selection of a lessor for the equipment to be leased. Leases in excess of \$20,000.00 shall be approved by the Board.

III. EXEMPTIONS

A. REPAIR AND MAINTENANCE PROVIDED BY ORIGINAL MANUFACTURER

Repair and maintenance services provided by the original equipment manufacturer, supplier or installer are exempt from the quoting aspect of this policy when their services are required due to a specific or proprietary type of equipment.

B. SOLE SOURCE

It is the policy of the OCWA to promote competition in the procurement process, whenever possible. Toward that end, the Agency will not specify the product of a certain manufacturer to the exclusion of all other comparable products, except where such a designation is required for the public interest, such as where local geographic, security, public health or other conditions require the use of and only the type of equipment specified. Where OCWA specifies a particular article or type of equipment which it regards as its general standard, it will provide that any other manufacturer of a similar equipment may meet the specifications if his or her

product is reasonably equivalent to that mentioned as the standard. Only in those instances where OCWA is required to secure equipment or service from a sole source of reasons of local geographic, security, public health or other conditions, may a purchase of such items or service be made without a competitive procurement process. In such instance, the Board shall by resolution declare the need to purchase the equipment or service from a sole source vendor prior to purchase.

C. EMERGENCIES

Notwithstanding any of the other provisions in this procedure, in the case of public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting OCWA buildings, property, pipelines, or the life, health, safety or property of OCWA employees, customers or the general public require immediate action which cannot await a competitive process or competitive bidding, contracts for public work or the purchase of supplies, materials or equipment or services may be let by OCWA's Executive Director or his designee by immediate contract and the Executive Director may temporarily dispense with the competitive bidding or procurement requirements set forth herein. However, a good faith emergency must exist and while the emergency procurements do not require competitive bidding, it is nevertheless the policy and procedure of OCWA that such procurements must, wherever possible, be made at the lowest possible cost to OCWA and must be later affirmed by OCWA's Board. Declarations of Emergency shall be documented in writing.

D. STANDARDIZATION

Standardization should be utilized only where there are strong reasons of efficiency or economy. It is OCWA's policy and procedure that it will not specify the product of a certain manufacturer to the exclusion of all other comparable products, except where such a designation is required for the public interest. Although OCWA may specify a particular article or type of equipment which it regards as its general standard, it should provide that any other manufacturer of a similar object may meet the specifications if his or her product is reasonably equivalent to that mentioned as the standard. Nevertheless, in those instances where the public interest requires that OCWA standardize, such standardization may only occur upon the adoption of a Resolution by a vote of at least three-fifths of all the members of the Board stating that, for reasons of efficiency or economy, there is a need for standardization. Even where OCWA standardizes on a particular article or type of equipment, competitive bids or quotes from all suppliers of that article or type in upstate New York or, if necessary, outside the area should be actively solicited to promote competition. In such case, the Executive Director, or designee, shall contract with the lowest responsible bidder, or the party providing the lowest quote, furnishing the required security after any public advertisement as may be required herein. Such Resolution of standardization shall contain a full explanation of the reasons for its adoption.

E. SURPLUS AND SECOND-HAND SUPPLIES

Surplus and second-hand supplies, material or equipment may be purchased by OCWA without competitive bidding from the Federal Government, the State of New York or from any other political subdivision, district or public benefit corporation.

F. PURCHASES THROUGH ONONDAGA COUNTY OR NEW YORK STATE

Notwithstanding the provisions of this procedure, OCWA is authorized to make purchases of material, equipment or supplies, when available, utilizing the County or State's existing, current competitive procurement lists directly. The sole exception is in the instance where bids have already been received by OCWA for the purchase by OCWA of the material, equipment or supplies, and such purchase cannot be made upon the same terms, conditions and specifications and at a lower price through the County or State. When there are multiple local vendors for the same product at the same price under these State or County contract lists, it is OCWA's policy to distribute purchase among all of these vendors and thereby equitably distribute business opportunities to as many local vendors as practical.

G. PURCHASES THROUGH MUNICIPALITIES OTHER THAN ONONDAGA COUNTY OR NEW YORK STATE

Notwithstanding the provisions of this Procurement Policy regarding the procurement of goods, equipment and services (including construction), the Executive Director or his/her designee may make purchases of materials, chemicals, equipment, vehicles or supplies, or may contract for services, as may be required by OCWA, through the use of a contract let by the United States of America or any agency thereof, any state or any other political subdivision or district therein if such contract was let to the lowest responsible bidder or otherwise in a manner consistent with the New York Public Authorities Law and made available for use by other governmental entities.

H. PURCHASES BY OTHER THAN THE LOWEST RESPONSIBLE BIDDER

In the event a contract is awarded to other than the lowest responsible bidder, OCWA shall include written documentation and justification specifying why such award furthers the purposes of this policy. When a contract is awarded utilizing "best value" procedures, the award shall be based to the extent possible on objective and quantifiable analysis, and best value RFPs shall include a description of the manner in which the evaluation of the offers and award of the contract will be conducted, and as appropriate, identify the relative importance of price and non-price factors.

The authority provided to OCWA pursuant to this provision shall not relieve any obligation on the part of OCWA to comply with any applicable minority and women-owned business enterprise program mandates and the preferred source requirements of section one hundred sixty-two of the State Finance Law of the State of New York.

IV. PROCEDURES

A. ADVERTISEMENT AND OPENING OF BIDS

Advertisements for bids shall be published in the official OCWA newspaper designated for such purpose. Such 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. OCWA staff shall also take all such additional measures as possible including broad direct solicitation by letter and telephone and notice to public listings such as the Dodge Reports and Syracuse

Builder's Exchange (for construction services) to maximize the response to the bid and thereby increase competition. OCWA may, by Resolution, designate any officer or employee to open the bids at the time and place specified in the notice. Such designee present shall make a record of such bids in such form and detail as may be necessary for meaningful review and present the same at the next regular or special meeting of the Board. All bids received shall be publicly opened and read at the time and place so specified. At least ten working days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of the bids.

B. BID MISTAKE

In all contracts involving public projects governed by this procedure where a unilateral error or mistake is discovered in the bid, such bid may be withdrawn, upon approval by the Board, after a showing of the following:

- (1) The mistake is known or made known to OCWA prior to the awarding of the contract or within three working days after the opening of the bid, whichever period is shorter; and
- (2) The price bid was based on an error of such magnitude that enforcement would be unconscionable; and
- (3) The bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgmental error; and
- (4) The error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor or material or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and
- (5) It is possible to place OCWA in status quo ante.

Unless otherwise required by law, the sole remedy for a bid mistake shall be withdrawal of that bid and the return of the bid bond or security, if any, to the bidder. Thereafter, OCWA may, in its discretion, award the contract to the next lowest responsible bidder or re-bid the contract. Any amendment to, or reformation of a bid or a contract to rectify such an error or mistake therein, is strictly prohibited.

C. SUPPORT FOR MINORITY, WOMEN-OWNED, AND SMALL BUSINESSES

OCWA supports contracts with minority, women-owned, and small businesses when awarding contracts in purchasing goods, services and equipment. OCWA 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 Agency will encourage active participation by women-owned, minority-owned and small businesses in its procurement process, including reviewing and referencing any available lists of such vendors and actively and affirmatively soliciting their participation through letter and telephone advisement of the coming procurement, and will fully support equal opportunity and fair treatment of all people in its contracting.

D. QUOTATION PROCESS

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

E. STATEMENT OF NON-COLLUSION REGARDING BIDS AND PROPOSALS SUBMITTED TO OCWA

Every sealed bid in excess of \$10,000.00 in value hereafter made to the Agency to provide work, services or equipment to OCWA 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.

F. OTHER PROCUREMENT REQUIREMENTS

As a public authority created under New York State Law, OCWA's Policy and Procedures is subject to all of the Restrictions on contracts during the procurement process set forth in Section 139-j of the State Finance Law of the State of New York, as well as the Disclosure of contracts and responsibility of offerors set forth in Section 139-k of said State Finance Law. In addition, OCWA Board Members, officers and employees shall conduct themselves at all times in accordance with the OCWA Conflicts of Interest Policy and the OCWA Code of Ethics Policy as amended from time to time by the Board.

G. ANNUAL REVIEW

The Board shall annually review this Policy and Procedure. OCWA's Executive Director shall be responsible for assisting OCWA in conducting an annual review of this Procurement Policy and for an evaluation of the internal control structure established to ensure compliance with this Procurement Policy.

Adopted December 11, 2009

Revised May 19, 2010 (\$5,000-\$20,000 3 written quotes; \$1,000-\$5,000 3 verbal quotes)

Revised October 14, 2011 (\$2,000-\$5,000 3 verbal quotes; Exempt Original Manufacturer)

Revised May 13, 2013 (Purchases through Municipalities Other Than...; Construction Contracts – “pursuant to the requirements and exceptions”)

Revised January 15, 2014 (formatting)

Revised June 18, 2014