

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

D/B/A EMPIRE STATE DEVELOPMENT

Guidelines Regarding the Use, Awarding, Monitoring

and Reporting of Procurement Contracts

Effective April 1, 2022

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D/B/A EMPIRE STATE DEVELOPMENT ("ESD")
Guidelines Regarding the Use, Awarding, Monitoring and
Reporting of Procurement Contracts

Effective April 1, 2022

1. Overview and Requirements

The following guidelines (the "Guidelines") are applicable to the use, awarding, monitoring and reporting of procurement contracts of the New York State Urban Development Corporation, d/b/a Empire State Development and its subsidiaries (collectively, "ESD"), ESD is required to adopt procurement guidelines by Article 9, Title 4 of the Public Authorities Law ("PAL"). The same law requires annual review and updating of the guidelines by the ESD Board of Directors ("Board"), including subsidiary Boards.

These Guidelines are modeled on the New York State Procurement Guidelines published by the State Procurement Council (the "SPC Guidelines"). The SPC Guidelines apply to all State agencies and thus provide useful guidance for procurement by ESD (which is not a State agency as that term is defined in the SPC Guidelines). The SPC Guidelines cover some issues and procedures rarely encountered by ESD but should be consulted by staff if a situation arises that does not appear to be covered in these Guidelines, since useful guidance may thereby be obtained. View the [SPC Guidelines](#).

In these ESD Guidelines, a person, firm or corporation who wishes to provide goods and/or services to ESD may be called a "**vendor**" or "**offeror**" or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming an ESD vendor, a "**respondent**."

It is imperative that the proper steps are followed when procuring a vendor. Failure to follow the proper steps such as buying goods or services without proper approvals may leave both the purchaser and Corporation in a vulnerable position. Under no circumstance should anyone acquire goods or services without the necessary approvals or required documents. Please be advised that this apply to both new procurement and amendments or modifications of procurements. Corrective steps including but not limited to restarting an entire procurement process may be taken if ESD Procurement Guidelines are not strictly followed.

1.1. Contracts covered, and not covered, by the Guidelines

Pursuant to PAL § 2879 (2), "**Procurement Contracts**" are any written agreements for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more. Contracts which are intended to earn money or other assets or benefits to ESD (often referred to as "**revenue contracts**") are also considered Procurement Contracts for the purposes of these Guidelines.

For purposes of compliance with anti-lobbying laws contained in State Finance Law § 139-j and 139-k (see section 8.1), Procurement Contracts also include the purchase or lease of any interest in real property which involves an estimated annualized expenditure by ESD in excess of fifteen

thousand dollars (\$15,000).

Disposition of property (real or personal) by ESD is not a procurement covered by these Guidelines but is instead subject to ESD's [Property Disposition Guidelines](#). However, where a property disposition requires a competitive process, that process should be conducted in accordance with these Guidelines to the extent practicable.

Loans and grants made by ESD in furtherance of its economic development mission are not Procurement Contracts, but may be subject to certain provisions of these Guidelines, including Office of the State Comptroller ("OSC") review and approval for grants over \$1 million (see p. 23, Section 10.5).

A Contract or Memorandum of Understanding ("MOU") with a sister State agency or authority is not considered a Procurement Contract covered by these Guidelines. Note, however, that appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement, as well as OSC approval for binding agreements) may apply to MOUs.

In connection with certain of its projects, ESD may need to obtain a license from a governmental agency, authority, or company or a public utility in order to enter the licensor's premises and perform work. As a precondition to receiving the license, ESD can be required to enter into agreements with the licensor that prescribe conditions for work to be performed on the site, including work and/or oversight of work which must be performed by the licensor's personnel or contractors, as well as payment of licensor costs by ESD. Examples include licenses for work on rail and utility facilities. Agreements of this kind, often referred to as "**forced contracts**," are not covered by the competitive solicitation requirements of these Guidelines, because ESD has no discretion or authority with respect to the work to be performed by the licensor's personnel and contractors. However, appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement) would apply.

Procurement Contracts **under \$50,000** may be handled by **Purchase Order** approved by Department Head, Procurement Department, Controller's Office and Contracts Administration. A formal competitive solicitation is not required, but these purchases should be made after obtaining three quotes whenever practicable. For further information, consult the Procurement Coordinator.

1.2. Types of Procurement Contracts

The types of goods and services requiring Procurement Contracts include goods and services needed to proceed with an ESD project, or to support the administrative needs of ESD. Procurements of goods cover the entire spectrum of goods, ranging from pens to motor vehicles.

Procurements of personal services include but are not limited to legal, accounting, auditing, management consulting, investment banking, underwriting, financial advice, temporary employees, planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature

for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of ESD.

Reasons for procuring personal services include:

- a. Requirements of special expertise or unusual qualifications;
- b. Nature, magnitude or complexity of services required;
- c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- d. Short-term or infrequent need for the services; and
- e. Distance of the location(s) where the services must be performed from ESD offices or facilities.

Term Contracts (sometimes referred to as "open retainer" contracts) are also included in and covered by these Guidelines. These contracts may be used when ESD anticipates using a vendor or vendors multiple times over a given period of time. In such cases, a maximum contract period must be specified when the contract is entered into. In all other respects, these Guidelines apply.

1.3. General Procurement Principles

ESD's procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet agency needs;
- Provide checks and balances to regulate agency procurement activities; and
- Protect the interests of ESD, the State and taxpayers.

Procurement Contracts are to be awarded on a **competitive basis** to the maximum extent practicable. Such awards are generally made after notice of the procurement opportunity is published in the **New York State Contract Reporter** where the amount of the contract is **\$50,000 or more** and after the evaluation of proposals obtained, whenever practicable, from at least three qualified vendors or respondents, including where practicable at least one State-certified minority-or woman-owned business enterprise ("MWBE") and one service-disabled veteran-owned business ("SDVOB"). (See Section 7: Types of Solicitations). Monetary thresholds may not be avoided by artificially splitting or breaking up contracts into lesser agreements, or entering into a series of agreements, for sums below the dollar thresholds. Also, if a mini bid is completed and the bidders have all submitted costs that are equal to or greater than the threshold of \$50,000, an RFP must be posted on the contract reporter.

Competition in the procurement process serves both ESD and potential vendors by ensuring that the procurement process produces an optimal solution at a reasonable price; and allowing qualified vendors an opportunity to obtain ESD business, while the process guards against inflated pricing, favoritism, fraud and collusion; and allows all qualified vendors an opportunity to obtain ESD business.

2. Procurement: Overview and Requirements

2.1. The Procurement Process Guide

I. Purchases greater than \$5,000 and less than \$50,000

- If ESD's procurement needs can be met by a preferred source vendor, you **must** use this option. See section 2.2.
- If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Please follow OGS guidelines of each specific contract as indicated in section 2.3.
- If ESD's needs cannot be met by the above options, you may elect to do an informal solicitation, in the following order: a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business (see section 2.6), a mini-bid off a pre-qualified list (see section 2.8) or a mini-bid to a minimum of three vendors equipped to provide services. One of the vendors should be an MWBE/SDVOB whenever practicable (see section 6) Contact the Procurement Unit for further assistance if needed.
- If this is an emergency situation or only one vendor can meet the needs required for service, the initiating department head must justify the need to Single or Sole Source this request in the justification memo and with the us

II. Purchases of \$50,000 or greater

- If ESD's procurement needs can be met by a preferred source vendor, you **must** use this option. See section 2.2.
- If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Please follow OGS guidelines of each specific contract as indicated in section 2.3.
- If ESD's needs cannot be met by the above options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business **up to \$500,000**. See Section 2.6.
- If ESD's needs cannot be met by the above options, you may elect to do a mini bid off of a prequalified list. You must solicit to a minimum of three vendors. One vendor should be an MWBE/SDVOB whenever practicable. See section 2.8.
- If ESD's needs cannot be met by the above options, use a Request for Proposals ("RFP"), Request for Qualifications ("RFQ") or Request for Expressions of Interest (RFEI), and **advertise in the Contract Reporter** if this is not an emergency situation and ESD's needs can be met by more than one vendor. See Section 4.