



Chautauqua, Cattaraugus, Allegany & Steuben Counties

Southern Tier Extension Railroad Authority

**Center for Regional Excellence, 4039 Route 219, Suite 200, Salamanca, New York 14779
TEL (716) 945-5301 FAX (716) 945-5550 TDD (716) 945-5301**

**"This institution is an equal opportunity organization"
John Margeson, Chairman**

PROCUREMENT REPORT

For The Year Ending December 31, 2012

Background: The procurement practices of the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority (hereinafter "STERA") are required to be compliant with the various provisions of the following statutes:

- A. NYS Public Authorities Law (PAL), Title 28-AA, Section 2642-m (procurement requirements in STERA's enabling legislation).
- B. NYS Public Authorities Law (PAL), Section 2824 (general procurement requirements for public authorities in NYS).
- C. NYS Labor Law, Section 220 (the "state prevailing wage law"), only applicable for building construction project construction contracts undertaken by STERA.
- D. NYS State Finance Law section 135 (the "Wicks Law"), only applicable for building construction project construction contracts undertaken by STERA.
- E. NYS State Finance Law, Sections 139-j and 139-k (the "Procurement Lobbying Law").
- F. NYS Executive Law Article 15-A (MWBE requirements), applicable to all procurement contracts undertaken by STERA.
- G. US Code of Federal Regulations, Title 7, Volume 15, Chapter 30, Part 3019, section 3019.44, only applicable for STERA purchase contracts using federal funds of \$100,000 or more.

The Public Authorities Accountability Act and the 2009 Public Authorities Reform Act do not have specific procurement requirements or provisions for local public authorities for competitive bidding for purchase or sale transactions. Section 2879 of the Public Authorities Accountability Act is specifically limited to state authorities, and does not include requirements for public authorities. STERA is not subject to the competitive procurement requirements of Section 103 and 104-b of the New York State General Municipal Law, or the provisions of New York State Finance Law Section 136-a.

STERA is not required to procure professional services through a competitive procurement process. Contracts for professional services involve contracting for the application of specialized expertise, the use of professional judgment, or a high degree of creativity. Professional services also may include services which require special education and/or training, license to practice, or that are creative in nature.

Competitive procurement is required by NYS Public Authorities Law Section 2642-m for any construction contract involving an expenditure of more than \$5,000. Construction contracts must be awarded to the lowest bidder who, in the authority's opinion, is qualified to perform the work required and who is

responsible and reliable. However, this competitive procurement requirement applies only to new construction projects and not to contracts for reconstruction, rehabilitation, improvements, maintenance, or repair work, which are considered to be non-construction projects.

Competitive procurement is required by US Code of Federal Regulations, Title 7, Volume 15, Chapter 30, Part 3019, section 3019.44 for any procurements made with federal funds involving a contract of \$100,000 or more. However, when utilizing federal funds, competitive bidding is not required for procurements of less than \$100,000.

Construction contracts involving the reconstruction of, rehabilitation of, and improvements to buildings are required to conform to state prevailing wage law (New York State Labor Law Section 220) and Wicks Law (New York State Finance Law Section 135). STERA's railroad construction, reconstruction, rehabilitation, improvements, maintenance, or repair projects are not public works projects within the meaning of New York State Labor Law Section 220, as they are private beneficiary projects, and thus the prevailing wage requirements of New York State Labor Law Section 220 are not applicable to those types of STERA projects (exception: STERA public highway grade crossing projects are public works projects within the meaning of New York State Labor Law Section 220, and thus the prevailing wage requirements of New York State Labor Law Section 220 are applicable to STERA public highway grade crossing projects).

STERA must conform to the requirements of New York State Executive Law Article 15-A relating to MWBE requirements with respect to all procurements. However, Article 15-A does not also require competitive procurement.

STERA must conform to the requirements of the Procurement Lobbying Law contained in New York State Finance Law Sections 139-j and 139-k, which relate to ensuring that only permissible contacts occur during the restricted period of STERA's procurement process for procurements involving an estimated annualized expenditure in excess of \$15,000. Additionally, neither Section 139-j nor Section 139-k require competitive procurement.

Report: In 2012, STERA was not involved with any public works contracts. Further, during 2012, STERA entered into no purchase contracts involving an expenditure of more than ten thousand dollars. The following tables describe all procurement contracts entered into by STERA during the year ending December 31, 2012:

All Procurement Contracts entered into during 2012:

| <u>Vendor</u> | <u>Subject</u> | <u>Value</u> |
|---|----------------------------------|---------------------|
| Edward Bysiek CPA, PLLC | Audit Services | \$2,900 |
| Harris Beach LLC | Legal | \$1,965 |
| Hayes Corporation | Directors and Officers Insurance | \$4,883 |
| Southern Tier West Regional Planning and Development Board | Administrative Services | \$7,500 |

Procurement contract entered into during 2012 with New York State businesses and governmental entities:

| <u>Vendor</u> | <u>Subject</u> | <u>Value</u> |
|--|-------------------------|--------------|
| Edward Bysiek CPA, PLLC | Audit Services | \$2,900 |
| Harris Beach LLC | Legal | \$1,965 |
| Southern Tier West Regional Planning and Development Board | Administrative Services | \$7,500 |

Procurement contract entered into during 2012 with foreign business enterprises:

None

In 2012, STERA procured directors and officers insurance and audit services through competitive procurement and bid processes, and selected the low price quotation, although the dollar values of these two contracts remain below the New York State General Municipal Law Section 103 threshold that otherwise would require them to be subject to competitive purchase and bidding requirements. In the case of directors and officers insurance, STERA's broker did seek price quotations for the directors and officers insurance and STERA selected the low price quotation. STERA also had sought price quotations for multi-year audit services and had selected the low price quotation. STERA has certified that the fees paid for both of these services represent fair market value for these services.

In 2012, STERA procured legal services from its longstanding counsel, which was selected owing to its expertise relating to public authorities. The dollar value of this procurement is below the New York State General Municipal Law Section 103 threshold that otherwise would require it to be subject to competitive purchase and bidding requirements. STERA has certified that the fees paid for these services represent fair market value for these services.

In 2012, STERA continued its long standing administrative relationship with the Southern Tier West Regional Planning and Development Board under which the Southern Tier West Regional Planning and Development Board provides administrative services to STERA. STERA continues to procure administrative services from this entity because of its expertise and experience relevant to STERA. The dollar value of this procurement is above the New York State General Municipal Law Section 103 threshold that otherwise would require it to be subject to competitive purchase and bidding requirements. However, STERA did not procure these administrative services through a competitive procurement process. Nonetheless, STERA asserts that it could not procure services of equal quality from any source, and STERA also asserts that it could not procure substitute services at a lower or even equal price. Furthermore, STERA certifies that the fees paid for all of these services represent fair market value for these services. STERA feels that this relationship allows it to obtain these services necessary to its operation at a fair price that does not exceed their market value.

Certifications: The Chief Executive Officer / Chief Financial Officer of STERA certifies that he has reviewed the terms of these purchases of services and has determined that they comply with applicable law and procurement guidelines, including STERA's Contract and Procurement Policy, and also certifies that none of these contracts involved a contract price for services purchased that exceeded fair market value.

On March 18, 2013, the STERA Board of Directors reviewed the terms of these purchases of services and determined that they comply with applicable law and procurement guidelines, including STERA's

Contract and Procurement Policy, and also certifies that none of these contracts involved a contract price for services purchased that exceeded fair market value.



RICHARD T. ZINK
Executive Director (CEO)

March 18, 2013

Date