



Chautauqua, Cattaraugus, Allegany & Steuben Counties

Southern Tier Extension Railroad Authority

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

CONTRACT AND PROCUREMENT POLICY

1. The Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority (hereinafter “Authority”) has adopted this Contract and Procurement Policy in order to comply with:
 - 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 the Authority.
 - D. NYS State Finance Law section 135 (the “Wicks Law”), only applicable for building construction project construction contracts undertaken by the Authority.
 - 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 the Authority.
 - G. US Code of Federal Regulations, Title 7, Volume 15, Chapter 30, Part 3019, section 3019.44, only applicable for purchase contracts using federal funds of \$100,000 or more.

Any conflicts between this Contract and Procurement Policy and those laws shall be resolved in favor of those laws.

2. General procurement procedures with respect to competitive procurement:
 - A. The Authority may procure commodities, equipment, goods or services not otherwise subject to the provisions of either paragraph 2.B or paragraph 2.C herein through a Best Value standard, which takes into consideration other factors than just price, per the following procedures:
 1. Up to \$5,000 per instance – Purchases may be made without competitive procurement at the discretion of the Chairperson or chief executive officer of the Authority or other authorized designee.
 2. Greater than \$5,000 to \$50,000 per instance – Purchases may be made based upon documented verbal quotations or written/fax/email quotations from at least three vendors.
 3. Greater than \$50,000 per instance – Purchases may be made based upon Written Request for Proposal.
 4. Notwithstanding the foregoing, the Authority is not required to procure professional services through a competitive procurement process. Contracts for professional services involve 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 are creative in nature. Examples include: lawyers, accountants, and engineers. Additionally, professional service contracts often involve a relationship of trust and confidence in the vendor. Procurement of professional services is not subject to the solicitation procedures contained herein.

5. Notwithstanding the foregoing, should the Authority make a determination that the public interest is best served by making a purchase of commodities, equipment, goods or services without competitive procurement, finding:
 - a. that the proposed vendor is qualified to perform the work required or provide the commodities, equipment, goods or services required,
 - b. that the proposed vendor is responsible and reliable,
 - c. that the price to be set for the procurement is likely to be either the lowest price if a competitive procurement were followed or a fair market price for the commodities, equipment, goods or services required, that is, the price is likely to be a Best Value, and
 - d. that there is some valid public purpose for not undertaking a competitive procurement process, to include but not be limited to public safety, public health, and timeliness,then the Authority may procure those commodities, equipment, goods or services without competitive procurement, regardless of the dollar value involved, provided that the procurement does not involve either:
 - a. a procurement involving an expenditure of more than \$5,000 that is related to a new construction project, per paragraph 2.B, or
 - b. a purchase involving federal funds of \$100,000 or more, per paragraph 2.C.
 6. Notwithstanding the foregoing, should cumulative procurements pursuant to paragraphs 2.A.1 or 2.A.2 above exceed \$100,000 per calendar year for a single vendor, the Authority shall consider preparing a Written Request for Proposal for such procurements.
- B. Competitive procurement is required by NYS Public Authorities Law Section 2642-m for any construction contract involving an expenditure of more than \$5,000. The contract must be awarded to the lowest bidder who, in STERA'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.
- C. 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. See paragraph 5 herein for specific requirements. However, when utilizing federal funds, competitive bidding is not required for procurements of less than \$100,000.
3. Other specific procurement requirements not related to competitive procurement:
 - A. Construction contracts involving the reconstruction of, rehabilitation of, and improvements to buildings are required to conform to state prevailing wage law (NYS Labor Law Section 220) and Wicks Law (NYS Finance Law Section 135).

- B. The Authority must conform to the requirements of NYS Executive Law Article 15-A relating to MWBE requirements with respect to all procurements. This Article 15-A requirement does not require a competitive procurement procedure.
 - C. The Authority must conform to the requirements of the Procurement Lobbying Law contained in NYS Finance Law Sections 139-j and 139-k, which relate to ensuring that only permissible contacts occur during the restricted period of the Authority's procurement process for procurements involving an estimated annualized expenditure in excess of \$15,000. The Sections 139-j and 139-k requirements do not require a competitive procurement procedure.
4. Miscellaneous procurement provisions:
- A. Any contract awarded by the Authority shall contain such terms and conditions as the Authority may deem desirable, consistent with the provisions of this Policy and all applicable law.
 - B. The Authority 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 Authority 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.
 - C. The Authority is not subject to the NYS General Municipal Law.
 - D. The Authority is not subject to NYS Finance Law Section 136-a.
5. For purchase contracts involving federal funds of \$100,000 or more, the Authority must adhere to the competitive procurement provisions of U.S. Code of Federal Regulations, Title 7, Volume 15, Chapter 30, Part 3019, Subpart C, Section 3019.44. The requirements shall include the following:
- A. Normally, purchases shall be made by competitive procurement using a sealed bid or other bidding process in which the opportunity for collusion can be expected to be avoided or minimized. The selected bidder normally shall be the apparent low bidder who meets the requirements or standards of paragraph 5.B herein.
 - B. Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the term and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of U.S. E.O.'s 12549 and 12689, "Debarment and Suspension."
 - C. The Authority shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. In this regard, the Authority shall consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
 - D. The Authority shall determine the type of contract used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts), but in any event the contract used shall be appropriate for the particular procurement and for the promotion of the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.
 - E. The Authority shall keep records of and, on request, make available for the Federal awarding agency, any and all pre-award review and procurement documents, such as requests for

proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

1. The Authority's procurement procedures or operation fails to comply with the procurement requirements of U.S. Code of Federal Regulations, Title 7, Volume 15, Chapter 30, Part 3019, Subpart C, Section 3019.44 and the standards and requirements of the Federal funding program used to fund the procurement.
2. The procurement is expected to exceed the small purchase threshold of \$100,000 and is to be awarded without competition or is to be awarded when only one bid or offer is received in response to a solicitation or is to be awarded to other than the apparent low bidder under a sealed bid procurement.
3. The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.
4. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

Adopted on March 8, 2012 by Resolution of the
Chautauqua, Cattaraugus, Allegany and Steuben
Southern Tier Extension Railroad Authority

Secretary

March 8, 2012

Date