



## New York City Energy Efficiency Corporation

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### Procurement Policy

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### Introduction

The purpose of this Procurement Policy (this “Policy”) is to set forth the policies of the New York City Energy Efficiency Corporation (“NYCEEC”) with respect to all procurements of goods and services (including information technology, professional, consulting and other services of any type). This Policy is designed to help ensure that all material purchases of goods, and services by NYCEEC to achieve its mission are procured in a competitive and cost-effective manner, with the goal of attaining high quality and good value for NYCEEC and in a manner consistent with all applicable legal and contractual requirements. It is NYCEEC’s policy to negotiate contracts for services on the basis of demonstrated competence and qualification for the type of services required and at fair and reasonable prices, subject to the methods described in this Policy.

In addition to the provisions described in Part I, which generally apply to all NYCEEC procurements, this Policy is divided into the following two parts based on the expected funding source for a given procurement:

- the provisions of Part II apply where U.S./federal funds will not be used to pay for goods or services procured by NYCEEC under this Policy (each a “Non-Federal Procurement”); and
- the provisions of Part III apply where U.S./federal funds will or may be used to pay for goods or services procured by NYCEEC under this Policy (each, a “Federal Procurement”).

Notwithstanding the foregoing, where any other laws, rules, regulations or contracts applicable to NYCEEC’s funds, or any portion thereof, prescribe procurement requirements that differ from those set forth in this Policy, the requirements of such laws, rules, regulations or contracts shall govern with respect to the procurement of the goods and/or services that will or may be paid for with such funds.

## **-- Part I --**

### **General Provisions**

#### **1.1. Definitions.**

In addition to other capitalized terms defined elsewhere in this Policy, the following terms shall have the meanings set forth below.

“Bidder” means any bidder, proposer, offeror, respondent or other person or entity providing a price quote or submitting a proposal or other offer to become a Vendor and sell goods and/or services to NYCEEC.

“Board” means the Board of Directors of NYCEEC.

“Competitive Procurement Guidelines” has the meaning given in Section 2.3 below.

“Evaluation Criteria” means:

(b) for Non-Federal Procurements of *goods* that do not constitute a Mass Market Purchase or a Commodity Purchase: (i) the Bidder’s competence and capacity to provide the goods as required by NYCEEC; (ii) cost or price; and (iii) such other criteria as NYCEEC may consider appropriate or as may otherwise be required under this Policy;

(a) for Non-Federal Procurements of *services*: (i) the Bidder’s competence and capacity to perform the services as required by NYCEEC; (ii) the Bidder’s qualifications; (iii) the Bidder’s relevant knowledge and experience; (iv) the Bidder’s reputation in the industry; (v) cost or price; and (vi) such other criteria as NYCEEC may consider appropriate or as may otherwise be required under this Policy;

(c) for Non-Federal Procurements that are a Mass Market Purchase or Commodity Purchase: (i) the Bidder's competence and capacity to provide the goods as required by NYCEEC; (ii) cost or price; (iii) suitability to NYCEEC's needs; (iv) performance parameters; (v) reliability; and (vi) such other criteria as NYCEEC may consider appropriate or as may otherwise be required under this Policy;

(d) for Federal Procurements of *goods*: (i) the Bidder's competence and capacity to provide the goods as required by NYCEEC; (ii) cost or price is reasonable; (iii) the Bidder's integrity, public policy compliance, past performance record and the financial and technical resources of the Bidder; and (iv) such other criteria as NYCEEC may consider appropriate or as may otherwise be required under this Policy;

(e) for Federal Procurements of *services*: (i) the Bidder's competence and capacity to perform the services as required by NYCEEC; (ii) the Bidder's qualifications; (iii) the Bidder's relevant knowledge and experience; (iv) the Bidder's reputation in the industry; (v) cost or price is reasonable; (vi) the Bidder's integrity, public policy compliance, past performance record, and the financial and technical resources of the Bidder; and (iv) such other criteria as NYCEEC may consider appropriate or as may otherwise be required under this Policy.

**“Legal”** means the General Counsel of NYCEEC and their designee(s) who are NYCEEC employees.

**“Management”** means the following officers of NYCEEC who are also NYCEEC employees: the President (or at least one co-President, if applicable), the Vice President (if any), and the Treasurer.

**“NYCEEC Purchaser”** means the director, officer, employee or other representative of NYCEEC who initiates or otherwise sponsors a procurement covered by this Policy, and who, upon Vendor selection, will typically become the “contract owner” or “NYCEEC Purchaser” who will act as NYCEEC’s primary day-to-day point of contact with the Vendor.

**“Operations”** means the Director of Operations and their designee(s) who are NYCEEC employees.

**“Permitted Exceptions”** means exceptions duly made on a case-by-case basis to all or any portion of this Policy in accordance with **Section 1.5** below.

**“RFP”** means any written Request for Proposals or other written solicitation issued by NYCEEC pursuant to this Policy under which Bidders are requested to submit written proposals, bids, price quotes or other offers to sell specified goods or services to NYCEEC.

**“Ops Guide”** means such operational and/or other guidance document(s) as Operations (in consultation with Legal) and may promulgate and/or update from time to time to supplement, operationalize and/or further implement this Policy and procurements undertaken hereunder.

**Selection Committee** means a minimum of three (3) NYCEEC employees responsible for reviewing proposals, ranking or scoring Bidders/proposals using a ranking or scoring matrix spreadsheet and otherwise deciding which Bidder(s)/proposal(s) to recommend for selection.

**Vendor** means any person or entity that contracts with NYCEEC as a “contractor” (and that is not a “subrecipient”) and sells, or may sell, goods or services to NYCEEC.

#### **1.2.       Applicability.**

This Policy applies to the procurement by NYCEEC of all goods and services, except for procurements that constitute Permitted Exceptions.

#### **1.3.       Management Oversight.**

Management is responsible for general control of this Policy. This Policy has been duly approved by the Board and shall be placed in NYCEEC’s permanent policies and procedures manual or another appropriate location to enable all employees easy access to this Policy. This Policy should be reviewed, revised as appropriate, and approved by the Board as often as is required by law or is otherwise considered prudent and appropriate by Management and/or the Board.

#### **1.4.       Responsible Party.**

Management hereby appoints the Director of Operations as the NYCEEC employee responsible for monitoring and ensuring day-to-day compliance with this Policy. Except as may otherwise be decided by Management, each procurement by NYCEEC will be managed by the NYCEEC Purchaser under the oversight and guidance of Operations and in collaboration with Legal as and when appropriate.

#### **1.5.       Permitted Exceptions.**

On a case-by-case basis, any or all of the requirements applicable to Non-Federal Procurements, or contracts awarded under Non-Federal Procurements, may be waived by the President where they have determined it is prudent, appropriate, and allowed under applicable law, to grant such waiver (each such waiver will constitute a “Permitted Exception” hereunder). Each Permitted Exception should be documented in writing (email is acceptable), and a copy provided to Legal and Operations for filing in the appropriate procurement file for the matter.

#### **1.6.       Other Provisions.**

In addition, NYCEEC staff should use NYCEEC’s sales tax exemption for applicable payments. As a not-for-profit, NYCEEC has applied for and received a sales tax exemption from New York state (See New York State Tax Law section 1116(a)(4)). Where this sales tax exemption is applicable to a purchase, NYCEEC employees should ensure it is applied to the best of their ability. The tax exemption is to be used exclusively to make purchases for use by NYCEEC and is not for personal use; use of the exemption for personal purchases would imperil NYCEEC’s tax exempt status, among other consequences.

An overview of NYCEEC's standard procurement methods is below and is followed by the requirements associated with each.

### **1.7. Funding Source.**

Prior to undertaking each procurement under this Policy, the specific goods and/or services to be procured should be clearly identified and the funding source for the procurement should be confirmed in writing with Operations and Legal, and the Treasurer should be informed in advance and in writing of the procurement.

Non-Federal Procurements shall be undertaken pursuant to Part II below. Federal Procurements shall be undertaken pursuant to Part III below.

### **1.8. Solicitation Cancellation.**

The issuance of any given RFP or other solicitation under this Policy does not bind NYCEEC to issue any award(s); neither does the submission of proposal(s) or quotes by Bidders guarantee any contract(s) will be awarded from a solicitation. NYCEEC may in its sole discretion cancel or amend a procurement and/or RFP at any time and for any reason. Similarly, NYCEEC in its sole discretion may select more than one Bidder if it determines that multiple persons or entities are required to provide the goods or services required or it is otherwise prudent and appropriate to select more than one Bidder.

### **1.9. Vendor Selection and Approval**

In general, NYCEEC shall select the Vendor(s) whose goods or services best satisfy the applicable Evaluation Criteria and such other requirements as may be applicable under this Policy. After the NYCEEC Purchaser or the Selection Committee (as the case may be) has decided which Bidder(s) to recommend for selection, the recommendation must first be approved in writing by the President (or another NYCEEC officer or employee designated in writing by the President) before the award(s) can be issued or any contract(s) can be entered into. Such recommendation and approval should be in form and substance reasonably consistent with NYCEEC's prevailing operational guidance and prior practices consistently observed.

### **1.10. Contract Award; Negotiation and Vendor Onboarding.**

After completion of either a Non-Federal Procurement or a Federal Procurement under this Policy, if one or more Bidders have been selected to be awarded a contract and such selection has been approved by the President (or their designee) under Section 1.9 above, NYCEEC will adhere to the provisions described below. All procurements undertaken under this Policy should therefore follow these guidelines for award, contract negotiation and on-boarding as set forth in this section. Except as otherwise specified below or in the Ops Guide, the process described in this section will generally be undertaken by Operations in collaboration with Legal and the NYCEEC Purchaser.

### **(a) Award Letter**

As described below, in some instances award letter(s) should be prepared and issued to the winning Vendor(s). Refer to the Ops Guide for further guidance on award letters.

In a procurement for services, once the Vendor(s) is/are selected, award letter(s) will be prepared and issued to the winning Bidder(s). Simultaneously the other Bidders (if any) will be notified that they were not selected. NYCEEC will also issue an award letter in each instance of an award arising out of a competitive solicitation done under the Competitive Procurement Guidelines.

In a procurement for goods or a Mass Market or Commodity Purchase, once the Vendor(s) is/are selected, an award letter be prepared and sent when applicable. If an award letter is issued, other Bidders (if any) should be notified that they were not selected.

### **(b) Contract Negotiation and Form**

In a procurement for consulting and professional services, after the award letter(s) is/are issued, NYCEEC should negotiate contract(s) with the winning Bidder(s) at a cost or price that is fair and reasonable to NYCEEC.

- A. In determining whether the contract cost or price is fair and reasonable in the context of a Non-Federal Procurement, NYCEEC should take into account: the estimated value, scope, complexity and professional nature of the services to be rendered, and any additional factors as may be required under this Policy.
- B. In determining whether the contract cost or price is fair and reasonable in the context of a Federal Procurement, to the extent applicable NYCEEC should apply the guidelines specified in Appendix C to this Policy.

If NYCEEC desires to select a single Vendor and within a reasonable period of time NYCEEC is unable to negotiate a satisfactory contract with the first ranked Bidder at a cost or price NYCEEC determines to be fair and reasonable, NYCEEC shall terminate negotiations with that Bidder and undertake negotiations with the second ranked Bidder (if applicable). If NYCEEC is unable to negotiate a contract with any of the selected Bidders within a reasonable period of time, NYCEEC may select additional Bidders in an order based on the quality of their proposals and their proposed prices, competence and qualifications, and may continue negotiations in accordance with this section until an agreement is reached.

Contracts for consulting or professional services will be written on NYCEEC's standard form of contract to the extent possible, or on another form of contract that is acceptable in form and substance to NYCEEC. Prior to execution, contracts with Vendors should be reviewed and approved by Legal.

To the extent applicable, consulting and professional services contracts will contain any provisions required pursuant to NYCEEC's current contract with the City of New York (as such contract may be amended, modified, renewed or replaced from time to time) or any other applicable contract or law, and will otherwise be consistent with NYCEEC's policies.

### **(c) Vendor Onboarding and Contract Ownership**

Following Vendor selection, and the issuance of an award letter (if applicable) at or around the time the contract with the Vendor is entered into by NYCEEC, as more fully detailed in the Ops Guide, NYCEEC will collect all additional information, forms, insurance certificates and other documents or materials as may be necessary to “onboard” the selected Vendor into NYCEEC’s contract management and accounts payable system.

When a Vendor contract is fully executed and becomes effective, the NYCEEC Purchaser will generally become the “Contract Owner” for that contract. As described in more detail in the Ops Guide, the Contract Owner is generally responsible for overseeing the Vendor’s performance of its obligations, and managing the NYCEEC-Vendor relationship and the contract with the Vendor.

#### **1.11. Contract Amendments.**

Subject to the other provisions of this Policy (including, without limit, those specified in Section 4 of Appendix B to this Policy) and the requirements of applicable law and NYCEEC’s contractual obligations, Vendor contracts may be amended by NYCEEC to extend the term, increase the maximum contract price, change the scope and for any other reason; provided, that:

- A. with respect to a Micro Purchase consulting or professional services contract resulting from a Non-Federal Procurement, any amendment to increase the maximum contract price to greater than \$20,000 shall not be permitted unless approved by the department head to whom the applicable NYCEEC Purchaser reports (for example, the head of Business Development, Operations, Engineering, Legal or another similar department within NYCEEC);
- B. with respect to a Small Purchase or a Standard Purchase consulting or professional services contract resulting from a Non-Federal Procurement, any amendment to increase the maximum contract price shall not be permitted unless approved by the President as a Permitted Exception under Section 1.5 above;
- C. with respect to a Sole Source Purchase consulting or professional services contract resulting from a Non-Federal Procurement, any amendment to increase the maximum contract price or to renew or extend the term shall not be permitted unless approved pursuant to Section 2.2(e) below;
- D. with respect to all contracts resulting from a Federal Procurement, any amendment to increase the maximum contract price or any extension of the term of the contract shall not be permitted unless such amendment (i) is allowed under applicable legal and NYCEEC’s contractual requirements, and (ii) is approved by the President as a Permitted Exception under Section 1.5 above;

#### **1.12. Procurement Records and Record Keeping**

Regardless of which procurement method is utilized in a given procurement, the NYCEEC Purchaser is responsible for working with Operations and Legal to ensure that

documentation and other written records of the procurement are maintained and filed in a manner consistent with applicable legal and contractual requirements, NYCEEC policies and the Ops Guide.

**-- Part II --**

**Non-Federal Procurements**

This Part II applies to all Non-Federal Procurements. Federal Procurements are governed by Part III below.

**2.1. Overview of Procurement Methods.**

All Non-Federal Procurements should be undertaken through one of the following five methods:

**(a) Micro Purchase.** A “Micro Purchase” means any purchase of goods and/or services in an amount that does not exceed \$20,000, and where the procurement does not constitute one of the other procurement methods described in this Part II. Procurements shall not be artificially divided so as to constitute a Micro Purchase procurement.

**(b) Small Purchase.** A “Small Purchase” means any purchase of goods and/or services in an amount that does not exceed \$250,000, and where the procurement does not constitute one of the other procurement methods described in this Part II. Procurements shall not be artificially divided so as to constitute a Small Purchase procurement.

**(c) Standard Purchase.** A “Standard Purchase” means any purchase of goods and/or services in an amount in excess of \$250,000, and where the procurement does not constitute one of the other procurement methods described in this Part II.

**(d) Mass Market / Commodity Purchase.** A “Mass Market Purchase” or “Commodity Purchase” means any purchase of standardized goods or services that are widely available, easily comparable, and commercially marketed (for example, laptops, word processing software or other “software as a service”, desk chairs, office supplies, or insurance products) and where there is no reasonable expectation that the Vendors of such good or service would be willing or able to submit any type of meaningful response as a Bidder to an RFP issued by NYCEEC.

**(e) Sole Source Purchase.** A “Sole Source Purchase” is a purchase of goods and/or services from a single Vendor without competition (meaning solicitation of a proposal from only that one Vendor, or if after solicitation of proposals by RFP or otherwise from a number of Bidders, competition is determined to be inadequate).

## **2.2. Procurement Methods: Solicitation and Selection**

The following describes the requirements for solicitation and Vendor selection for each procurement method listed in Section 2.1, above. Competitive procurements under this Part II of the Policy should generally follow the Competitive Procurement Guidelines.

### **(a) Micro Purchase ( $\leq \$20,000$ )**

For Micro Purchases, the NYCEEC Purchaser should, if feasible given NYCEEC’s needs and the relevant time constraints, obtain and evaluate quotes or proposals from one or more Bidders as they deem reasonable and appropriate. If only one quote or proposal is obtained, however, the procurement shall not be considered a Sole Source procurement for purposes of this Policy; provided, that the cost of the goods or services purchased does not exceed the dollar threshold for a Micro Purchase.

A Micro Purchase procurement undertaken in accordance with this subsection that results in (i) fair and reasonable prices for NYCEEC, and (ii) if applicable, a qualified service provider, need not follow the evaluation and selection process described in this Policy for Sole Source purchases and/or Standard Purchases. The NYCEEC Purchaser should select the Bidder that best meets these requirements.

The contract may be awarded to the Vendor selected by the NYCEEC Purchaser after (1) confirming in writing with Operations that the foregoing requirements have been satisfied in a manner reasonably consistent with NYCEEC’s prevailing practices for the same or similar procurements; and (2) obtaining the written approval of the President (or their designee) as contemplated in Section 1.9. After such approval is obtained, the process described in Section 1.10 should be undertaken with respect to notifying the Vendor and completing the contracting and Vendor onboarding process.

### **(b) Small Purchase ( $\leq \$250,000$ )**

The Competitive Procurement Guidelines do not need to be followed in the context of a Small Purchase procurement if the NYCEEC Purchaser determines it is reasonable and appropriate to undertake a noncompetitive Small Purchase procurement and Operations confirms such determination in writing.

For a noncompetitive Small Purchase procurement, the NYCEEC Purchaser must take reasonable efforts to obtain and evaluate (i) reasonably recent pricing information for at least three examples of analogous goods and/or services from other Vendors or other Bidders, and (ii) the qualifications and experience of the proposed Vendor, to ensure (within reason) that the pricing is fair and reasonable for NYCEEC and that the Bidder has the requisite qualifications and experience. The NYCEEC Purchaser should select the Bidder that best meets these requirements.

For a competitive Small Purchase procurement, the NYCEEC Purchaser should follow the Competitive Procurement Guidelines.

The contract may be awarded to the selected Vendor after the NYCEEC Purchaser (1) confirms in writing with Operations that the foregoing requirements have been satisfied in a manner reasonably consistent with NYCEEC's prevailing practices for the same or similar procurements; and (2) obtains the written approval of the President (or their designee) as contemplated in Section 1.9. After such approval is obtained, the process described in Section 1.10 should be undertaken with respect to notifying the Vendor and completing the contracting and Vendor onboarding process.

**(c) Standard Purchase (>\$250,000)**

To the maximum extent practicable, NYCEEC should conduct all material procurements in a manner that promotes full and open competition. Accordingly, for Standard Purchase procurements, NYCEEC should undertake a competitive solicitation of proposals from Bidders by issuing an RFP in accordance with the Competitive Procurement Guidelines described in Section 2.3 below.

Following the completion of the RFP process described in the Competitive Procurement Guidelines, if one or more Vendors have been selected by the Selection Committee the contract(s) may be awarded to the selected Vendor(s) after the NYCEEC Purchaser (1) confirms in writing with Operations that the procurement has been completed generally in accordance with the Competitive Procurement Guidelines and in a manner reasonably consistent with NYCEEC's prevailing practices for the same or similar procurements; and (2) obtains the written approval of the President (or their designee) as contemplated in Section 1.9. After such approval is obtained, the process described in Section 1.10 should be undertaken with respect to notifying the Vendor(s) and completing the contracting and Vendor onboarding process.

**(d) Mass Market / Commodity Purchases**

The Competitive Procurement Guidelines do not need to be followed in the context of a Mass Market or Commodity Purchase procurement if, in collaboration with Operations, the NYCEEC Purchaser determines that it is reasonable and appropriate to undertake a noncompetitive Mass Market or Commodity Purchase procurement.

For a noncompetitive Mass Market or Commodity Purchase procurement, the NYCEEC Purchaser should take reasonable efforts to obtain, evaluate and compare proposals, product offerings or price quotes from at least three (3) Bidders. (Such proposals, offerings or quotes may include price lists obtained from the internet, catalogue listings and telephone quotes, and the comparison may be written out or summarized via spreadsheet). Such proposals, product offerings, or price quotes should be reasonably recent and should be evaluated/compared to one another on the basis of the applicable Evaluation Criteria.

As the comparison and evaluation will differ by procurement need (for example, laptops may differ among more and/or different performance parameters than printer paper), the NYCEEC Purchaser should confer with Operations to determine how best to clearly

document the performance comparison needed to identify the selection that best and most cost-effectively meets NYCEEC's needs. Documentation should, at the minimum, include a comparison of key performance characteristics across options reviewed and cost metrics (including maintenance cost implications, if applicable), and the NYCEEC Purchaser's selection of the best and most cost-effective Vendor for NYCEEC's needs based on this comparison.

After evaluating the proposals, product offerings or price quotes, the NYCEEC Purchaser (or the Selection Committee, if applicable) should select the Vendor offering the product that best satisfies the applicable Evaluation Criteria.

If a Vendor is selected, the contract may be awarded to the selected Vendor after the NYCEEC Purchaser (1) confirms in writing with Operations that the foregoing requirements have been satisfied in a manner reasonably consistent with NYCEEC's prevailing practices for the same or similar procurements; and (2) obtains the written approval of the President (or their designee) as contemplated in Section 1.9. After such approval is obtained, the process described in Section 1.10 should be undertaken with respect to notifying the Vendor and completing the contracting and Vendor onboarding process.

#### **(e) Sole Source Purchases**

A contract for a purchase of goods and/or services from a single Vendor without competition (meaning solicitation of a proposal or quote from only that one Vendor, or if after solicitation of proposals by RFP or otherwise from a number of Bidders, competition is determined to be inadequate) (a "Sole Source Purchase") may be awarded, or renewed, for a Non-Federal Procurement only when: (1) such award or renewal is permitted or not prohibited by the Federal, state or local law, rule or regulation, if any, applicable to the funds being used; (2) such award or renewal is duly approved in writing by the Board or the Executive Committee, or when, with the Board's approval, the President or another Officer of NYCEEC determines in writing that there is only one source for the required goods or services; (3) the award or renewal of a contract under another available procurement method is infeasible; and (4) one or more of the following circumstances apply: (A) the goods or services are available only from a single source; (B) the President or another Officer of NYCEEC determines in writing that emergency circumstances exist such that time is of the essence; (C) if applicable, the awarding agency authorizes non-competitive proposals; or (D) after solicitation of a number of proposals or quotes from multiple Bidders, competition is determined to be inadequate.

For Sole Source Purchases, the NYCEEC Purchaser should provide to the Board, the Executive Committee, the President or another NYCEEC Officer (as the case may be) a written request for approval of the award or renewal, including a clear and concise explanation as to why the procurement should qualify as a Sole Source Purchase and how it satisfies all applicable requirements specified above. The award or renewal of a Sole Source Purchase may only be made if written approval of the request is given by the applicable approver(s).

*Price Increases and Contract Extensions.* When increasing the maximum contract price or extending an existing contract that was originally awarded as a Sole Source Purchase, the increase or extension may be approved only when: (1) such increase or extension is

permitted or not prohibited by the Federal, state or local law, rule or regulation, if any, applicable to the funds being used; (2) such increase or extension is duly approved in writing by the Board or the Executive Committee, or when, with the Board's approval, the President or another Officer of NYCEEC determines in writing that there continues to only be one source for the required goods or services; (3) the award of a new contract under another available procurement method is infeasible; (4) one or more of the following circumstances apply: (A) the goods or services continue to be available only from a single source; (B) the President or another Officer of NYCEEC determines in writing that emergency circumstances exist such that time is of the essence; or (C) if applicable, the awarding agency authorizes the increase or extension; (5) to-date the vendor of the goods or services has performed in a satisfactory manner; and (6) the procurement and engagement of a new vendor would involve more than a *de minimis* level of time and effort on the part of NYCEEC staff.

For approval of an increase to the maximum contract price or an extension of a contract awarded under a Sole Source Purchases, the NYCEEC Purchaser should provide to the Board, the Executive Committee, the President or another NYCEEC Officer (as the case may be) a written request for approval of the increase or extension, including a clear and concise explanation as to why the increase or extension is necessary and how it satisfies all applicable requirements specified above. An increase to the maximum contract price or an extension of a contract originally awarded under a Sole Source Purchase may only be made if written approval of the request is given by the applicable approver(s).

**(f) Minority and Women-Owned Businesses.** To the extent practicable and reasonable given the specific circumstances of a given Non-Federal Procurement, the NYCEEC Purchaser should endeavor to identify and solicit proposals or cost estimates from potential Bidders who are minority-owned and/or women-owned businesses.

### **2.3. Competitive Procurement Guidelines.**

In general, competitive Non-Federal Procurements undertaken under this Part II should be undertaken in a manner consistent with the following guidelines (the "Competitive Procurement Guidelines"):

The NYCEEC Purchaser should use their professional judgment, acting reasonably and in a manner consistent with NYCEEC's prevailing practices for the same or similar procurements, when determining the scope of the procurement (i.e., public vs. by invitation), and when developing an RFP, to be approved in advance by Operations and Legal, that will be (i) issued by NYCEEC by email sent directly to at least three (3) Bidders identified by the NYCEEC Purchaser, and/or (ii) posted to NYCEEC's website. The NYCEEC Purchaser should use reasonable efforts to obtain proposals from at least three (3) responsible Bidders.

Each RFP should: (i) give Bidders at least three (3) weeks from the date of issuance to submit proposals; (ii) include NYCEEC's standard terms and conditions for RFPs as approved by Legal; and (iii) where any portion of the funding for the procurement originates from a specific contact (such as NYCEEC's contract with the City of New York), include language that highlights specific terms and conditions that may be required or be otherwise instructive.

Proposals submitted by Bidders in response to an RFP issued under this Part II should be evaluated on the basis of the applicable Evaluation Criteria as follows:

**(a) Consulting and Professional Services.**

For competitive procurements of consulting and professional services, a Selection Committee of at least 3 NYCEEC employees (of which at least one should be Operations and others who are directly involved in oversight or use of the service being procured) should be used for all procurements that are greater than a Micro Purchase unless a Permitted Exception is granted pursuant to Section 1.5. The Selection Committee or the NYCEEC Purchaser (as the case may be) is responsible for reviewing the proposals, ranking or scoring the Bidders/proposals using a ranking or scoring matrix spreadsheet and/or such other documents or tools as are contemplated in the Ops Guide, and following any other process requirements which may be specified in the Ops Guide. Based on this review, the Selection Committee or the NYCEEC Purchaser (as the case may be) should decide which Bidder/proposal (if any) to recommend for selection. Refer to Section 2.2(c) for the process for confirming such recommendation and requesting approval.

**(b) Goods.**

For competitive procurements of goods, a Selection Committee is not required, but the same documentation is required as for consulting and professional services (above).

The NYCEEC Purchaser (or, if applicable, the Selection Committee) is responsible for reviewing the proposals, bids, price quotes and other relevant information, ranking the Bidders using the scoring matrix spreadsheet and/or such other documents or tools as are contemplated in the Ops Guide, and following any other process requirements which may be specified in the Ops Guide. Based on this review, the NYCEEC Purchaser (or, if applicable, the Selection Committee) should decide which Bidder/proposal (if any) to recommend for selection. Refer to Section 2.2(c) for the process for confirming such recommendation and requesting approval.

On a case-by-case basis where a Standard Purchase procurement is for over \$750,000 additional requirements may apply, when and as required by the President in consultation with Operations, Legal and the NYCEEC Purchaser.

**1. Overview of Key Differences in Micro Purchase, Small Purchase and Standard Purchase Methods.**

Type	Threshold	Method
Micro-Purchase	≤\$20,000	<ul style="list-style-type: none"><li>- Obtain and evaluate proposals from one or more Bidders if feasible</li><li>- Written confirmation from Ops that requirements have been satisfied</li></ul>

<b>Small Purchase</b>	$\leq \$250k$	<ul style="list-style-type: none"> <li>- No competitive procurement or RFP <i>required</i>, as long as Operations confirms it is reasonable and appropriate to do without such a procurement</li> <li>- Receive proposals</li> <li>- NYCEEC to document decision using prescribed form</li> <li>- Selection Committee (optional)</li> </ul>
<b>Standard Purchase</b>	$> \$250k$	<ul style="list-style-type: none"> <li>- Competitive procurement required</li> <li>- Receive proposals</li> <li>- NYCEEC to document decision and selection criteria using prescribed form</li> <li>- Selection Committee required (if procurement for services)</li> </ul>

## 2. Overview of Key Differences by Procurement Method

Type	RFP?	Multiple quotes?	Selection role	Purchase Size
<b>Carve-out Methods</b>				
Mass Market / Commodity	no	Y	NYCEEC Purchaser	any
Sole Source	no	N	NYCEEC Purchaser w/ Board or Exec Cmte approval	any
<b>Conventional Methods</b>				
Micro	Not required	Not required	NYCEEC Purchaser w/ Ops approval	$\leq \$20,000$
Small	Not required	Y	NYCEEC Purchaser or Selection Cmte	$\leq \$250k$
Standard	Required	Y	Selection Cmte	$> \$250k$

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**-- Part III --**

**Federal Procurements**

This Part III applies to all Federal Procurements. Non-Federal Procurements are governed by Part II above.

**3.1. Introduction and Purpose.**

In keeping with its commitment to maintain the highest standards of conduct and ethics, NYCEEC has adopted this Part III of the Policy to ensure that goods and services purchased by NYCEEC utilizing any federal funds are obtained in a cost-effective manner and in compliance with funder agreements and regulations, and applicable federal laws.

This Part III is informed by: (i) the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”) published by the U.S. Office of Management and Budget<sup>1</sup>, which sets forth procurement standards that apply to federal grant funding; and (ii) the Best Practice Guide for Procuring Services, Supplies and Equipment Under EPA Assistance Agreements.<sup>2</sup> Purchases undertaken as Federal Procurements may also be subject to prior funding source approval and additional requirements imposed by specific grants or contracts and federal funding agencies. NYCEEC Purchasers are responsible for reviewing any such additional requirements, bringing them to the attention of Legal and Operations, and ensuring that applicable subawardees, contractors and vendors perform in accordance with the terms, conditions, and specifications of their subaward agreements, contracts, task orders and purchase orders and otherwise in accordance with applicable NYCEEC policies.

**3.2. Code of Conduct with Respect to Federal Procurement.**

(a) NYCEEC Purchasers shall not participate in any procurement, or the selection, award, or administration of a contract if they have a real or apparent conflict of interest.<sup>3</sup> Such a conflict arises when:

(i) The NYCEEC Purchaser; any immediate family member (spouse, child, parent, parent- in-law, sibling, or sibling-in-law); partner; or an organization that employs, or is about to employ, any of the above has a direct or indirect financial or

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<sup>1</sup> 2 C.F.R. §§ 200.317–200.327 (2014).

<sup>2</sup> *Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements*, ENV’T PROT. AGENCY, <https://www.epa.gov/sites/default/files/2021-03/documents/best-practice-guide-for-procuring-services-supplies-equipment.pdf> (Last updated Nov. 2022).

<sup>3</sup> Employees, directors, officers, and agents of NYCEEC are subject to this Code of Conduct based upon the C.F.R. as well as NYCEEC’s Conflict of Interest Policy, and should periodically complete a disclosure of actual or potential conflicts of interest, as delineated in the Exhibit 2 to the NYCEEC Policies and Procedures Manual.

other interest in or will receive a tangible personal benefit from a firm or individual considered for the contract award; or

(ii) An “organizational conflict of interest” is created because of a relationship NYCEEC has with a parent, affiliate, or subsidiary organization that is involved in the transaction such that NYCEEC is or appears to be unable to be impartial in conducting a procurement action involving the related organization.

(b) Except to the extent permitted under NYCEEC’s Code of Ethics for Directors, Officers and Employees, NYCEEC Purchasers shall not solicit or accept gifts, money, gratuities, favors, or anything of monetary value from vendors, prospective vendors, parties to subcontracts, or any other person or entity that receives, or may receive, compensation for providing goods or performing services for NYCEEC.

(c) In addition to the foregoing, all NYCEEC Purchasers shall review and comply with NYCEEC’s Conflict of Interest Policy and all other NYCEEC procedures for disclosing, reviewing and addressing actual and potential conflicts of interest.

### **3.3. Procurement Requirements and Considerations.**

(a) Contractor vs Subrecipient. Before undertaking any Federal Procurement under this Part III, the NYCEEC Purchaser should confirm with Operations that the selected Vendor (if one is selected) can properly be considered to constitute a “contractor” to NYCEEC and not a “subrecipient” nor a “subawardee”. Refer to Section 2 of Appendix B to this Policy for further information regarding this determination.

(b) Covered Telecommunications Equipment or Services. This Part III does not allow for the procurement of “covered telecommunications equipment or services”.<sup>4</sup> Procurement of covered telecommunications equipment or services is covered under 2 CFR 200.216. Each of the following entities, and any affiliate of such entities, is a “Covered Entity”:

- (i) Huawei Technologies Company;
- (ii) ZTE Corporation; or

(iii) any other entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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<sup>4</sup> “Covered telecommunications equipment” is (i) any video surveillance and/or telecommunications equipment produced or provided by any Covered Entity, any telecommunications or video surveillance services provided by any Covered Entity, or any telecommunications or video surveillance services using any such equipment; and (ii) where such equipment and/or service is to be used for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, or other national security purposes.

(c) Competition. All procurements under this Part III shall be conducted in a manner that provides, to the maximum extent practical, full and open competition. In undertaking each procurement under this Part III, NYCEEC shall:

(i) Avoid noncompetitive practices that may restrict or eliminate competition, including but not limited to:

1. Working with, using sample language or templates from, accepting free services from, or hiring any Vendor to develop or draft specifications, requirements, statements of work, or invitations for bids or price quotes, or RFPs if that Vendor will be competing as a Bidder for the resultant contract.
2. Imposing unreasonable qualification requirements.
3. Requiring unnecessary experience and excessive bonding requirements.
4. Allowing noncompetitive pricing practices between Bidders.
5. Awarding noncompetitive contracts to Vendors on retainer contracts.
6. Permitting organizational conflicts of interest.
7. Specifying "brand name" only instead of allowing "an equal" product.
8. Taking arbitrary actions that favor one Bidder over others.

(ii) Not intentionally split the purchase or procurement into two or more separate purchases or procurements to avoid dollar thresholds that require more formal procurement methods.

(iii) Exclude persons or entities that develop or draft specifications, requirements, statements of work, or invitations for bids or RFPs from competing for such procurement.

(iv) Include in any prequalified list an adequate number of current, qualified Vendors, Bidders, or products (as applicable).

(v) Not preclude potential Bidders from qualifying during the solicitation period.

(vi) Not use any geographic preferences (state, local or tribal) in the evaluation of bids or proposals, except where expressly mandated or encouraged by applicable Federal statutes.

(vii) Prohibit Vendors from discriminating on the basis of race, color, national origin or sex in the performance of the contract.

(d) Profit. Under this Part III, for sole source procurements or when a cost analysis is used, profit must be negotiated as a separate element of the procurement price.

(i) To establish a fair and reasonable profit, NYCEEC should consider: the complexity of the work to be performed, the risk to be borne by the Vendor, the

Vendor's investment, amount of subcontracting that will be necessary, the quality of the Vendor's record of past performance, and industry profit rates in surrounding geographical area for similar work.

(ii) NYCEEC may not use either the "cost plus a percentage of cost", or "percentage of construction cost" methods of contracting as they incentivize contractors to increase costs in order to increase profit.

(e) Contracting with Disadvantaged Business Enterprises (DBEs) and Women's Business Enterprises (WBEs).

(i) As used in this Part III, the term "Disadvantaged Business Enterprise" (or "DBE") means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note);<sup>5</sup> and the term "Women's Business Enterprise (or "WBE") means a business concern which is at least 51% owned or controlled by women for purposes of EPA's 8% statute, or a business concern which is at least 51% owned and controlled by women for purposes for EPA's 10% statute.<sup>6</sup>

(ii) NYCEEC is committed to taking all necessary affirmative steps to assure that DBEs, small businesses, and WBEs are used whenever possible in connection with all procurements undertaken under this Policy. Accordingly, NYCEEC will make a good faith effort to contract with Vendors that are DBEs, small businesses, and WBEs, and document its methods used to adhere to the good faith efforts and retain the documentation in its records. Such steps include:

1. placing qualified Vendors and/or Bidders that are DBEs, small businesses and WBEs on solicitation lists;
2. soliciting proposals, bids or price quotes from qualified DBEs, small businesses, and WBEs whenever they are potential sources for the goods and/or services being procured;
3. dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified DBEs, small businesses, and WBEs;
4. establishing delivery schedules, where practical given NYCEEC's requirements, which encourage participation by qualified DBEs, small businesses, and WBEs; and

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<sup>5</sup> See 13 C.F.R. § 33.103 (2023). See also 40 C.F.R. § 33.203; 15 U.S.C. § 637(a)(5)-(6).

<sup>6</sup> See 13 C.F.R. § 33.103 (2023). Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50% interest in her share. Similarly, a business concern which is more than 50% owned by a married man will not become a qualified WBE by virtue of his wife's 50% interest in his share.

5. using services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

(f) Required Non-Discrimination Language. Each procurement contract for the purchase of services (and when feasible, for the purchase of goods) must include the following terms and conditions:

*The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.*

(g) Minimum Bonding Requirements (if applicable). For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (as defined below), the requirements for bonding shall, at a minimum, be as follows:

- (i) A bid guarantee from each Bidder is equivalent to 5% of the bid price.
- (ii) A performance bond on the part of the contractor/Vendor is for 100% of the contract price.
- (iii) All bonds required in this section are obtained from companies holding certificates of authority as acceptable sureties pursuant to the surety requirements for companies doing business with the United States (31 CFR Part 223).

(h) Solicitations. All RFPs and other solicitations issued by NYCEEC under this Part III shall incorporate a clear and accurate description of the technical requirements for goods or services to be procured. Such descriptions:

- (i) Must not contain features which unduly restrict competition.
- (ii) May include a statement of the qualitative nature of the goods, material, product and/or service to be procured, as applicable.
- (iii) When necessary, must set forth minimum essential characteristics and standards necessary to satisfy its intended use.
- (iv) Where the procurement is for goods, must avoid detailed product specifications that restrict competition if at all possible.
- (v) May use a "brand name or equivalent" description to define performance or other salient requirements when impractical or uneconomical to make a clear and accurate description of technical requirements. Specific named brand features required to be met must be clearly stated.

(vi) Must identify all requirements which Bidders must fulfill and all other factors to be used in evaluating bids, proposals or price quotes.

(i) Considerations. NYCEEC Purchasers should consider taking the following actions, as applicable, when procuring goods or services under this Part III:

(i) Conduct a lease vs. purchase analysis, when appropriate, including for property and large equipment.

(ii) Consolidate or break out procurements to obtain a more economical purchase, if possible.

(iii) Use state and local intergovernmental or inter-entity agreements, or common or shared goods or services, where appropriate.

(iv) Use federal excess and surplus property in lieu of purchasing new equipment and property, if feasible and reduces project costs.

(v) Use value engineering clauses to offer reasonable opportunities for cost reductions in construction contracts for projects of sufficient size.

(vi) Use time and materials contracts only if no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at their own risk. If such contract is negotiated and awarded, NYCEEC must assert a high degree of oversight to obtain reasonable assurance that contractor is using efficient methods and effective cost controls.

(vii) As appropriate and to the extent consistent with applicable law, and to the greatest extent practicable under a Federal Procurement, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States.

(viii) By statute, EPA may not reimburse for compensation paid to individual consultants on an hourly, daily or other basis that has the effect of exceeding the amount paid to Federal employees at Level IV of the Executive Schedule.

### **3.4. Procurement Methods.**

(a) Standard Methods. For all Federal Procurements, NYCEEC Purchasers will follow the applicable procurement method set forth below and as further summarized in Appendix A

(b) Federal Procurement Thresholds) attached to this Policy. It is the responsibility of NYCEEC to select the most appropriate method of procurement for each Federal Procurement.

(i) Micro-purchases (up to \$10,000) – Procurement of goods or services in an aggregate amount that does not exceed \$10,000 (or such greater amount as may be permitted by applicable law). This procurement method can take place without soliciting competitive proposals or price quotes, having taken into account the

applicable Evaluation Criteria. To the maximum extent practicable, NYCEEC should distribute micro-purchases equitably amongst qualified Vendors.

(ii) Small Purchases (greater than \$10,000 and up to \$250,000) – These relatively simple and informal procurements are to be used for procurements of goods or services in an aggregate amount of up to and including \$250,000 (the “Simplified Acquisition Threshold” or “SAT”). The key requirement of this procurement method is that a minimum of at least three (3) proposals or price quotes must be obtained from qualified Bidders.

(iii) Large Purchases (valued at greater than the SAT of \$250,000) must use one of these procurement methods:

1. Sealed bids – In order to utilize this procurement method, the following conditions must apply:

- there is a complete, adequate, and realistic specification or purchase description available,
- two (2) or more qualified Bidders are willing and able to compete effectively for the contract, and
- the procurement lends itself to a firm fixed price contract and the selection of the successful Bidder made principally on the basis of price.

The sealed bid process results in a firm fixed price contract (lump sum or fixed per unit price) being awarded to the Bidder whose bid conforms to all the material terms and conditions of the RFP and is the lowest in price.

The sealed bid method is the preferred method for contracting for goods, supplies, equipment, and construction work. Sealed bids must be publicly advertised, and bids must be solicited from an adequate number of qualified Bidders (NYCEEC defines “adequate” here as two (2) or more), providing them sufficient response time prior to the date set for opening the bids. The RFP or invitation for bid must clearly define the items or services requested and all bids will be publicly opened at the time and place prescribed in the invitation for bids. Any or all bids may be rejected if there is a sound documented reason.

2. Competitive proposals – Competitive proposals will be used when more than one source is available and either a fixed price or cost-reimbursement type contract will be awarded. If this method is used, the following requirements apply:

- NYCEEC will publicize a RFP and identify, in the RFP, the applicable Evaluation Criteria and their relative importance;
- Proposals must be solicited from an adequate number of qualified Bidders. (NYCEEC defines “adequate” here as three (3) or more, wherever possible);

- NYCEEC must follow its written method for conducting technical evaluations of the proposals received and for selecting Vendors (see Appendix B to this Policy);
- Contracts must be awarded to the responsible Bidder whose proposal is most advantageous to the applicable Federally funded program under which NYCEEC is undertaking the procurement, taking into consideration price and other applicable Evaluation Criteria;
- NYCEEC may use this process for procurement of architectural/engineering and other professional services whereby Bidders' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

(c) Exception to Standard Methods: Sole Source. A Federal Procurement by solicitation of a proposal from a single source may only be used if the NYCEEC Purchaser and Operations each determine that one or more of the following apply, such determinations are confirmed in writing by the President before the award is made, and the determinations and confirmations are each properly documented:

- (i) the good or service being procured is only available from a single source;
- (ii) public exigency or emergency will not permit any delay;
- (iii) Federal awarding agency or pass-through expressly authorizes Sole Source in response to a NYCEEC request; or
- (iv) after soliciting a number of sources, competition is determined inadequate.

Preference for one Bidder/proposal because of their response and reputation does NOT constitute justification that the item is only available from a single source. When a non-competitive procurement process is used, a NYCEEC's *Sole Source Justification Form* must be used.

(d) Requirements for all Federal Procurements. All Federal Procurements undertaken under this Policy shall:

- (i) Be necessary, at a reasonable cost, documented, not prohibited by law or the applicable funding source, and made in accordance with this Policy.
- (ii) Avoid acquiring unnecessary or duplicative goods or services.
- (iii) Engage responsible Vendors who possess the ability to perform successfully under the terms and conditions of the proposed procurement. NYCEEC Purchasers shall consider all applicable Evaluation Criteria when selecting a Vendor.

### **3.5. Procurement Procedures.**

The procurement procedures described in Appendix B (Federal Procurement Procedures) attached to this Policy shall be followed for all Federal Procurements.

### **3.6. Additional Contract Provisions.**

(a) NYCEEC Contracts. All NYCEEC procurement contracts to be awarded under this Part III shall contain the applicable contract provisions contained in Appendix II to 2 CFR Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

(b) Terms on Debarment. NYCEEC must ensure each Vendor procured under a Federal Procurement complies with 2 CFR Parts 180 and 1532 when using EPA funds and informs each person or entity with whom they do business with at the next lower tier (2 CFR 180.330) of these requirements. To pass down these requirements, NYCEEC will include a term or condition in lower-tier transactions requiring lower-tier participants to comply with subpart C of 2 CFR Parts 180 and 1521 (2 CFR Section 1532.332).

### **3.7. Documentation.**

(a) Debarment. NYCEEC shall either (i) confirm and document that each Vendor is not excluded from doing business with the federal government (see [www.sam.gov/SAM/](http://www.sam.gov/SAM/)) before entering into a contract with the Vendor, unless NYCEEC has obtained an exception from EPA under 2 CFR 200 or 180.135; and/or (ii) obtain a signed Debarment Certificate substantially in the form of Appendix D attached to this Policy prior to entering into a contract with the Vendor.

(b) Lobbying Certificate. For Federal Procurements of greater than \$100,000, prior to entering into a contract with selected Vendors, NYCEEC shall obtain signed Lobbying Certificates substantially in the form of Appendix E attached to this Policy.

(c) Records. NYCEEC shall maintain records sufficient to detail the history of each Federal Procurement transaction. These records must include, but are not limited to:

- (i) a description and supporting documentation showing rationale for procurement method (e.g., cost estimates);
- (ii) selection of contract type;
- (iii) written price or rate quotations (such as catalog price, online price, email or written quote), if applicable;
- (iv) copies of advertisements, RFPs, bid sheets or bid proposal packets;
- (v) reasons for Vendor selection or Bidder rejection, including Executive Committee or Board minutes if applicable, rejection letters and award letters; and
- (vi) the basis for the contract price.

### **3.8. Preferred Contractors.**

Through a competitive selection process, NYCEEC may identify preferred Vendors of commonly needed goods and services. Once qualified as preferred Vendors, these contractors can be engaged in the procurement of commonly needed goods and services of up to \$25,000 per transaction. Any preferred contractor relationship should be reevaluated at least every three years.

### **3.9. Future Purchases with Same Contractor.**

A Vendor that has been engaged and selected by NYCEEC through a competitive process in the past 12 months can be used to provide similar goods and services in case of repeat order (i.e., the need to procure similar goods and services previously procured from a particular Vendor within the last 12 months).

Similarly, NYCEEC can renew/continue an existing service agreement (i.e., lease, insurance, maintenance etc.) that was properly executed within the past 36 months and there is no significant increase in prices or onerous changes in the contract terms and conditions that is detrimental to NYCEEC interests such as those requiring NYCEEC to assume contractor's liabilities with third parties (e.g., delinquent taxes).

### **3.10. Compliance with this Policy.**

NYCEEC Purchasers and Operations shall maintain oversight to ensure that Vendors perform in accordance with the terms, conditions, and specifications of contracts or purchase orders. Violations of this Policy by any NYCEEC employee may result in disciplinary action, up to and including termination.

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## Appendix A

### Federal Procurement Thresholds

Type	Threshold	Method
<i>Micro-purchase</i> <sup>7</sup>	$\leq \$10,000^*$  * Or such greater amount permitted by law	<ul style="list-style-type: none"> <li>- Competition not required</li> <li>- Price must be reasonable</li> <li>- Purchases must be distributed equitably among qualified vendors to the extent practicable</li> <li>-</li> </ul>
<i>Small Purchase/Simplified Acquisition Threshold</i> <sup>8</sup>	$\$10,000.01 \leq \$250,000$	<ul style="list-style-type: none"> <li>- Obtain written price or rate quotations from at least 2 qualified vendors (or 3 qualified vendors if tied to EPA funds)</li> <li>- Must justify a decision to purchase at a higher price and ensure that the vendor charges similarly situated customers the same price as it is offering to you and document that decision in the procurement file</li> <li>- <b>Example documentation:</b> catalog price, online price, email or written quote</li> </ul>
<i>Sealed Bids</i> <sup>9</sup>	$> \$250,000$	<p><b>Pre-Solicitation</b></p> <ul style="list-style-type: none"> <li>- Conduct cost or price analysis (see <a href="#">Appendix C</a>)</li> </ul> <p><b>Solicitation</b></p> <ul style="list-style-type: none"> <li>- Publicly advertise invitation for bids</li> <li>- Include specifications or information sufficient for bidders to respond</li> <li>- Keep solicitation open for at least 30 days</li> <li>- Solicit a sufficient number of bids</li> </ul> <p><b>Bid Review/Selection</b></p> <ul style="list-style-type: none"> <li>- Open bids at time and place set forth in invite</li> <li>- Award to lowest responsive and responsible bidder</li> <li>- May reject bids for sound, documented reason<sup>11</sup></li> <li>- Award written, fixed price contract</li> <li>- Provide adequate time to respond</li> </ul>

<sup>7</sup> The Micro-Purchase Threshold set out by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1. is periodically adjusted for inflation. No cost analysis is required for procurements under this threshold. 2 C.F.R. § 200.320(a); 45 C.F.R. § 75.329(a). Procurement in an aggregate amount should not exceed \$10,000 (or such greater amount as may be permitted by applicable law).

<sup>8</sup> Small Purchases are those “relatively simple and informal” purchases valued at and above the Micro-Purchase Threshold, but below the Simplified Acquisition Threshold, which is set out by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 and periodically adjusted for inflation. No cost analysis is required for procurements under this threshold. 2 C.F.R. § 200.320(b); 45 C.F.R. § 75.329(b).

<sup>9</sup> Sealed bidding is appropriate when precise specifications can be developed and a firm fixed-priced contract will be awarded to the responsive bidder based principally on price. See 45 C.F.R. § 75.329(c)

Type	Threshold	Method
<i>Competitive Proposals</i>	> \$250,000	<p><b>Pre-Solicitation</b> Conduct cost or price analysis (see <a href="#">Appendix C</a>)</p> <p><b>Solicitation</b></p> <ul style="list-style-type: none"> <li>- Publicly advertise request for proposals</li> <li>- Identify evaluation factors and their relative importance</li> <li>- Solicit bids from at least two vendors</li> <li>- Keep RFP open for at least 30 days</li> </ul> <p><b>Proposal Review/Selection</b></p> <ul style="list-style-type: none"> <li>- Consider all proposals to maximum extent practical<sup>10</sup></li> <li>- Use written method to conduct technical evaluations of the proposals</li> <li>- Award contract to bidder with most advantageous proposal, considering price and other factors</li> <li>- Award fixed <b>price or cost-reimbursement contract</b></li> </ul>

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<sup>10</sup> Reasons to reject a bid include: (i) no responsible bidder; (ii) bids did not conform; (iii) insufficient number of bidders; or (iv) price appears unreasonable when compared to the CGC's cost and price analysis. Any or all bids may be rejected if there is a sound, documented reason.

## **Appendix B**

### **Federal Procurement Procedures**

The requirements, guidance and other terms specified below are applicable to Federal Procurements.

#### **1. Frequency of Procurement**

- B. The “Procurement Period” is the period of time that starts when the RFP for the initial procurement is issued (or when the procurement process is otherwise commenced), and ends when NYCEEC must conduct a new procurement process to procure the same goods or services that were the subject of the initial procurement.
- C. Except as otherwise stated in this Policy, or as otherwise determined by the President of NYCEEC, Procurement Periods can vary in length. The Procurement Period for a given Federal Procurement should be established upfront, prior to the date the RFP is issued or the initial procurement process is otherwise commenced.
- D. Factors to consider when setting a Procurement Period:
  - i. length of funding source contract,
  - ii. complexity of funding source requirements,
  - iii. type of good or service to be provided, and
  - iv. customization needed.
- E. Generally, where Federal funds will be NYCEEC’s funding source for the purchase of a given set of goods or services, NYCEEC should conduct a procurement for those goods and services every 3 to 5 years. However, the frequency at which NYCEEC conducts a procurement should be reasonable and should take into account funding source requirements as well as the nature of the goods and services procured. Unless determined otherwise by the President of NYCEEC, the default is for NYCEEC to conduct a procurement for a given good or service every 5 years.

#### **2. Subrecipient vs. Contractor Determinations**

- A. NYCEEC must use its best judgement to determine how to classify third-party agreements as either a subaward or a procurement contract. Below are the Uniform Guidance definitions of subrecipients and contractors which should be used in making this determination.
  - i. **Subrecipients:** Subrecipients receive subawards for the purpose of carrying out a portion of a Federal award and create a Federal assistance relationship with the subrecipient. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:
    - Determines who is eligible to receive what Federal assistance; and
    - Has its performance measured in relation to whether objectives of a Federal program were met; and
    - Has responsibility for programmatic decision making; and
    - Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
    - In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity; and

- Include procedures to require and perform risk assessments on subrecipients.

NYCEEC will monitor the activities of the subrecipient/subcontractor as necessary to ensure that the subawards is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subawards; and that subawards performance goals are achieved. See applicable NYCEEC policies for more information.

- ii. **Contractors:** Contractor characteristics are indicative of a procurement relationship between NYCEEC and the contractor, when the contractor:
  - Provides the goods and services within normal business operations; and
  - Provides similar goods and services within normal business operations; and
  - Normally operates in a competitive environment; and
  - Provides good and services that are ancillary to the operation of the federal program; and
  - Is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.
- B. Determinations on whether an entity is a subawardee/subrecipient or a contractor are not always straightforward, and the above characteristics are indicators only. **The substance of the relationship is more important than the form of the agreement.** The above indicators may not always be present and NYCEEC must review characteristics of the relationship to determine whether the arrangement as a whole have qualities that are more indicative of a subawardee/subrecipient or a contractor relationship. When a procurement transaction does not clearly fit in the characteristic of a contractor above, the judgment to apply procurement procedures should be documented by a memo to the file.

### **3. New Contract/Purchase Order.**

- A. The NYCEEC Purchaser should coordinate with Operations to determine the applicable and appropriate procurement method.
  - i. If micro-purchase or small purchase methods are appropriate, conduct procurement as outlined in Part III of this Policy and retain appropriate documentation of proposals or price quotes and Vendor selection, etc. If prior approval is required for the purchase, refer to step B below.
  - ii. If sealed or competitive bid methods are required, complete steps B through E below.
- B. If funding source approval is required, work with Operations to obtain that approval. Depending on the procurement method used, the NYCEEC Purchaser should provide requested documents and other information to Operations as part of the approval process.
- C. To the extent applicable, the NYCEEC Purchaser, in consultation with Operations, formalizes the RFP or other solicitation materials and submits it to any acceptable method of public distribution (i.e., local newspaper, NYCEEC website, etc.).
- D. For all Federal Procurements, the Bidder and the proposal or quote that best meets the applicable Evaluation Criteria should be selected, as follows:
  - (i) for a micro purchase procurement, the NYCEEC Purchaser will decide which Bidder and proposal or quote best meets the applicable Evaluation Criteria;
  - (ii) for a small purchase procurement and any sealed or competitive bid procurement, a Selection Committee will decide which Bidder and proposal or quote best meets the applicable Evaluation Criteria; and

- (iii) for a sole source procurement, the NYCEEC Purchaser will decide which Bidder to select; provided, that in addition to meeting the requirements specified in this Part III applicable to sole source purchases, to the extent applicable, the requirements specified in Section 2.2(e) above must also be satisfied.
- E. Except for a sole source procurement, after the selection is made, the contract may be awarded to the selected Vendor after the NYCEEC Purchaser (1) confirms in writing with Operations that the applicable procurement requirements have been satisfied in a manner reasonably consistent with NYCEEC's prevailing practices for the same or similar procurements; and (2) obtains the written approval of the President (or their designee) as contemplated in Section 1.9 of this Policy. After such approval is obtained (or in the case of a sole source procurement, after all applicable requirements specified in Section 1.9 have been satisfied), the process described in Section 1.10 of this Policy should be undertaken with respect to notifying the Vendor and completing the contracting and Vendor onboarding process.

#### **4. Extension/Renewal of Existing Contract/Purchase Order**

- A. For Federal Procurements of greater than the SAT of \$250,000, if the Procurement Period has not expired, the NYCEEC Purchaser may amend or renew an existing contract/purchase order to extend its term for the remainder of the Procurement Period if any adjustment in price is deemed reasonable pursuant to a cost analysis, and all other terms remain the same.
  - i. For example, if the competitive procurement covered a 5-year period and the initial contract/purchase order was for 2 years, NYCEEC Purchaser may extend the term of the initial contract/purchase order for up to 3 years so long as the price is deemed reasonable pursuant to a cost analysis and all other terms remain the same.
- B. For procurements of up to and including the SAT of \$250,000, if the Procurement Period has not expired, NYCEEC Purchaser may amend or renew an existing contract/purchase order to extend its term for the remainder of the Procurement Period if any adjustment in price is deemed reasonable and all other terms remain the same.

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## Appendix C

### Conducting a Price or Cost Analysis

**Price Analysis.** A “price analysis” is an evaluation of a proposed price, without regard to the contractor's or bidder's separate cost elements and proposed profit, to determine whether the price is reasonable. Although a price analysis is not required for contracts less than the Simplified Acquisition Threshold, a price analyses may be useful in documenting the reasonableness of contract costs. The following guide will assist you in completing a price analyses.<sup>11</sup>

#### **Price Reasonableness**

- A. If the Bidder's price appears reasonable based on NYCEEC's independent estimate (and other appropriate information) and other applicable requirements of this Policy are satisfied, purchase the good or service.
- B. If the Bidder's price is significantly higher than NYCEEC's independent estimate, review NYCEEC's requirements to determine whether unnecessary, overly restrictive, or complex requirements caused the higher-than-expected price. (Even if the price is significantly lower than expected, the NYCEEC Purchaser should review the stated requirement or plans and specifications to ensure they are complete and will result in the supply, equipment, or service needed.) It may help, in making a determination, to talk to those Bidders who provided quotes or bids.
- C. If, after this evaluation, NYCEEC determines the price is reasonable, considering the circumstances, and other applicable requirements of this Policy are satisfied, purchase the good or service.
  - i. If NYCEEC determines inappropriate requirements for the good or service resulted in an unreasonable price or the price is unreasonable, NYCEEC should make adjustments and obtain new offers or bids.
- D. NYCEEC should ensure that the Bidder's quote or bid is offering the same prices as what it offers to other similarly situated customers, particularly in sole-source situations. Agreeing to pay an excessive price for a good or service that NYCEEC purchases with EPA funds may lead to disallowance of the cost for the item even if NYCEEC are able to justify sole source procurement.

#### **Cost Analysis**

A cost analysis is the evaluation of each major contract cost category to determine reasonableness of each category and of the total cost of a contract or change order. A cost review may be done under negotiated cost type contracts, not fixed-priced contracts. Cost categories include personnel, fringe benefits, travel, subcontracting, indirect costs, profit and the like. To obtain the information NYCEEC needs to conduct a cost analysis, NYCEEC must require the Bidders to provide cost data with their proposals. Each Bidder should certify that the information reflects complete, current, and accurate data.

The following is a general list of cost categories under which contractors may submit cost information and guidance on how NYCEEC should evaluate each category:

- A. Personnel Costs – Costs for labor directly related to the contract.
  - i. Whether the level of effort or the total amount of time proposed is consistent with the effort required to complete the contract.
  - ii. The labor mix or the labor categories proposed to ensure they are consistent with the

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<sup>11</sup> To the extent applicable, reference may also be made to EPA's “*Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements*” available [here](#) (link accurate as of 2/20/2025)

- difficulty and technical nature of the work- professional versus nonprofessional versus clerical.
- iii. The proposed salaries, including reasonable escalation factors to ensure they are consistent with the Bidders' actual pay scales. Generally, the conversion of annual salaries into hourly rates is accomplished by dividing the annual salary by 2,087 hours (assuming an 8-hour work day).
- B. Fringe Benefits – Personnel costs other than employees' direct salary or pay (i.e., employer's portion of FICA insurance, retirement, sick leave, holiday pay, and vacation cost). While these costs are normally accumulated in a pool and allocated using percentages as shown below, Bidders may calculate actual fringe benefit costs for each employee who will work on NYCEEC's job.
- i. Whether the fringe benefit rate applied to the direct labor base corresponds to fringe benefits available to each of the proposed labor categories and are consistent with the Bidder's established benefits package.
  - ii. Whether the Bidder's FICA and unemployment insurance are applied only up to the maximum salary limits established by statute, if any.
- C. Indirect Costs – Indirect costs are costs which cannot be charged to a project specific activity. Some contractors may have federally approved indirect cost rates from a cognizant federal audit agency. NYCEEC may allow the contractor to charge the approved rate if it covers cost-reimbursement contracts.
- i. Indirect costs often include office space, equipment depreciation, and personnel costs for clerical pools, executive salaries, and administrative support. Each organization determines the costs it will include in its indirect cost pool, and the organization must treat the costs the same if the circumstances are alike. Indirect costs are allocated to the particular contracts based on a fair method of approximation, generally a percentage of a specific set of direct costs under the contract. Indirect costs are also referred to as overhead or burden costs.
  - ii. Indirect costs should be logically grouped and compared to some part or all of the organization's direct costs (the base). The most popular base is direct labor; however, there are instances where an equitable allocation cannot be made using this base.
  - iii. Consider if the Bidder does not have a federally approved rate:
    - a. Whether the allocation base is an equitable basis for distribution.
    - b. Whether the proposed overhead rate is the same as that used for the contractor's other contracts.
- D. Travel and per Diem Costs – Travel costs include transportation, per diem or subsistence, and other reasonable travel related items directly related to the contract.
- i. Whether the proposed travel is necessary to complete the contact.
  - ii. Whether all people traveling on a trip are necessary.
  - iii. The cost per trip.
  - iv. Whether the per diem or subsistence allowance is the same for other travel by the Bidder's personnel.
  - v. NYCEEC may use federal per diem rates for comparison purposes.
- E. Supply, Material and Equipment Costs – Bidders will often have costs for supplies, material, and equipment (items with an acquisition cost of \$5,000 or more), material, and supplies directly related to the contract.
- i. Whether the proposed equipment (items with a unit acquisition cost of \$5,000 or more) is

- needed to complete the contract.
- ii. Whether it would be better to lease or rent the equipment as opposed to purchasing it.
  - iii. Whether proposed materials and supplies are needed, and the costs appear reasonable.
- F. **Subcontract Costs** – Subcontracts are contracts awarded by NYCEEC's contractor.
- i. The procedures for cost review of contracts in excess of the Simplified Acquisition Threshold are the same as for a prime contract, so NYCEEC will need detailed cost information.
  - ii. For contracts less than the Simplified Acquisition Threshold, NYCEEC is not required to conduct a cost analysis, but such an analysis may be useful in documenting the reasonableness of the cost for the subcontract. (Profit for Bidders and subcontractors should be evaluated based on the profit section below).
- G. **Profit** – Profit is the amount paid to a contractor above the total cost of the contract. NYCEEC should ensure that contractors of negotiated contracts are paid only fair and reasonable profits, as required by 2 C.F.R 200.324(b). Profit must be a separate element of price when there is no price competition. EPA does not interpret this requirement to apply to micro-purchases made on a fixed priced basis.
- i. The Bidder's risk. Generally, the greater the risk the contractor assumes, the higher the rate of profit. Contractors assume greater risks on fixed-price contracts involving complex or difficult tasks as opposed to cost reimbursement contracts.
  - ii. Profits may also be higher if the contractor incurs significant capital costs, exercises considerable ingenuity, or does independent developmental work.
  - iii. Percentage of construction cost and cost plus a percentage cost contracts provide an incentive for the contractor to increase costs in order to increase profit. These contract types must not be used.

## **Cost Review Findings**

After you complete a required cost review, you must determine whether the proposed contract cost is reasonable. If the individual items are reasonable, the total cost is reasonable.

- A. If you find an individual cost is not reasonable, you should discuss the cost with the contractor. If, based on the contractor's justification, you and the contractor reach agreement that the cost is reasonable, accept the cost. If you and the contractor agree the cost is excessive, negotiate a reduction to a reasonable amount and accept the cost.
- B. If you cannot agree with the contractor concerning the reasonableness of proposed costs, reject that contractor's offer. If the next best offer meets your requirements, you should review proposed cost information for that contractor. Follow the same review and negotiation process as above for the new contractor's proposed costs.

## **Documentation**

Document all actions in conducting each price or cost analysis. Ensure all price and cost reviews are described and retained in NYCEEC records in accordance with the Ops Guide, applicable NYCEEC policies, and all applicable Federal and/or EPA record retention requirements .

## **Appendix D**

### **FORM OF DEBARMENT CERTIFICATION**

### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

#### Instructions for Certification

1. By signing and submitting this contract or proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in 22 CFR 513.105 and 513.110. The term "principals" includes, but is not limited to, officers, directors, owners, partners, and principal investigators. You may contact the person to which this proposal or contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by signing and submitting this contract or proposal that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions**

(1) The prospective lower tier participant certifies, by signing and/or submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name of Vendor, Contractor, or Subgrantee: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Appendix E**

### **FORM OF LOBBYING CERTIFICATION**

#### **Certification Regarding Lobbying**

##### **Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Signature

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Title

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Organization