

NIAGARA RIVER GREENWAY COMMISSION PROCUREMENT GUIDELINES

These guidelines incorporate the Niagara River Greenway Commission's (the "NRGC") Guidelines for Award of Procurement Contracts ("Procurement Guidelines"). Section 2879 of the Public Authorities Law sets forth the requirements that a public benefit corporation must adhere to in awarding and administering procurement contracts. It also requires an annual report on the award of procurement contracts for goods and services.

All personal services required by the NRGC shall be secured, through either full or part-time service, by employing qualified professionals and placing them on the NRGC payroll or as provided through Chapter 460 of the Laws of 2004.

On occasion, the NRGC requires the assistance of specialty firms to perform services to complete its mission. Often, neither the NRGC's personnel, nor staff available by assignment from the Office of Parks, Recreation and Historic Preservation, the Department of Environmental Conservation, The Department of Transportation or the Department of State pursuant to Chapter 460 of the Laws of 2004 have the particular area of experience or expertise to perform such services. In these instances, where the NRGC secures personal services through contracts or agreements, the following guidelines are applicable.

A. Before entering into procurement contracts for goods or services, the NRGC shall consider whether the contemplated services can be adequately and cost effectively performed by staff of the NRGC or by available staff of some other State agency or under existing State contract.

B. The NRGC's rationale for utilizing procurement contracts may include the need for specialized expertise not available within the NRGC or the need to provide services that do not arise on a sufficiently recurring basis to justify the hiring of an employee to provide the service.

The following guidelines set forth the policy of the NRGC by virtue of a resolution adopted by the NRGC's Commissioners (the "Commissioners"). These Procurement Guidelines provide an internal administrative policy for the guidance of the NRGC's officers and employees in connection with procurement contracts. The Procurement Guidelines are not intended and shall not be deemed to grant or confer any rights or remedies to or upon any third party.

1. Definitions:

- A. The term “Commission” means the Commissioners of the Niagara River Greenway Commission.
- B. The term “attempt to influence the procurement process” shall mean any attempt to influence any determination of a member, officer, or employee of the NRGC by a person other than a member, officer or employee of the NRGC with respect to (a) the solicitation, evaluation or award of a procurement contract involving an estimated annualized expenditure in excess of fifteen thousand dollars; or (b) the preparation of specification or request for submissions of proposals for a procurement contract involving an estimated annualized expenditure in excess of fifteen thousand dollars.

2. Applicability:

- A. Except as otherwise provided herein, all NRGC contracts are subject to these guidelines. A representative (but not exclusive) list of types of goods purchased and a description of those areas of responsibility and oversight requiring the use of personal services and the reasons therefor is set forth in Attachment 1.
- B. Exclusions: Project procurement contracts which are paid for by the NRGC’s Grantees may be excluded from these guidelines upon approval by the Treasurer/Controller or the Executive Director of the NRGC.

3. Thresholds for Procurement Guidelines:

Public Authorities Law Section 2879 defines a procurement contract as, “any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of \$5,000 or more.”

The NRGC adopts and maintains the threshold levels for the procurement of goods and services as the NYS Office of Parks, Recreation and Historic Preservation. The current threshold levels are as follows:

PRICE INCLUDING SHIPPING

METHOD OF SELECTING A VENDOR & MAKING AN AWARD FOR PURCHASES

Up to \$2,499

Procurements may be confirming or non-confirming by using either a letter order or requisition/purchase order. Evidence of competition at the regional level must be referenced in the Procurement Record (i.e. vendor selection and reasonableness of price) and MWBE requirements must be satisfied.

\$2500 to \$4,999

Requires at least three (3) quotes. The lowest quote or the quote representing the best value* must be obtained in writing and submitted to the NRGC's main office with the requisition. Confirming procurements must be limited to emergencies only and must be documented.

\$5,000 to \$14,999

Requires at least three (3) written quotes; quotes submitted to the NRGC's main office with a requisition. Confirming procurements require the authorization of the Executive Director or Treasurer before the procurement is made.

\$15,000 and above **

Requires formal bid process, advertisement in the NYS Contract Reporter (unless an emergency situation or other extenuating circumstances allow for a waiver from this requirement); waiver requests are submitted directly to the NRGC's Executive Committee for consideration and approval.

- Confirming requisitions must have a justification with it demonstrating reasonableness of price and vendor selection, as well as the nature of the emergency.

Notes: Quotes must include all costs associated with the procurement; e.g. shipping, set-up, surcharges, or deposits, etc.

*Though typically reserved for complex service and technology contracts, “best value” procurements optimize quality, cost and efficiency. This term is most often associated with commodity purchases when a best value determination can be made on price alone.

When it becomes necessary to competitively bid an ongoing service that lends to a renewable or multi-year agreement, the anticipated dollar value of the entire contract term should be considered before a procurement option is pursued.

** Printing thresholds are different. Procurements valued at \$5,000 or more must be advertised in the Contract Reporter.

4. Prior Approvals:

All proposals for the procurement of goods and services are first reviewed and approved by the Treasurer/ Controller and Executive Director to determine the services required, the fair and appropriate nature of the proposed compensation and continuity with the objectives of the specific grant or donation against which the contract is proposed to be applied. NRGC reviews and approves all proposed contracts prior to execution. All procurement contracts are signed by the Chairman / Executive Director. Funds covering the contract are encumbered against the particular grant or donation and cash flow is managed by the NRGC or the Natural Heritage Trust accounting office should it be the holder of the account. Payments are made on the basis of submitted invoices detailing the goods or services provided and/or certification of the contractors actual expenses.

A. To the extent deemed appropriate by the Executive Director, the Treasurer/Controller or Counsel, procurement contracts may include, but should not necessarily be limited to, the following provisions:

1. Scope of services
2. Contract price or fee structure
3. Method of monitoring work performance
4. Use of NRGC supplies
5. Use of NRGC personnel
6. Method or basis of payment
7. Wavier of immunity
8. Compliance with laws, rules and regulations
9. Contract Deemed Executory
10. Termination of agreement for cause and for convenience (for the NRGC only)
11. Amendment or assignment of agreement
12. Death of consultant
13. Laws of New York State apply
14. Creation of independent contractor relationship

15. Provisions required by law deemed inserted
16. Term
17. Bankruptcy of consultant
18. Extension provisions
19. Severability
20. Appendix A (Standard Clauses)
21. Contract deliverables

5. Requirements for the Selection of Contractors for Procurement Contracts

A. The NRGC shall make every effort to secure offers from contractors for procurement contracts on a competitive basis and to select from such offers the qualified contractor offering the most favorable terms. In its attempt to secure procurement contracts on a competitive basis and upon the most favorable terms, the NRGC shall, to the extent practicable as determined by the Executive Director or the Treasurer/Controller of the NRGC:

1. Solicit offers from at least five firms, (where possible) known to be qualified in the area of goods or services to be provided;
2. Where required by law, or where otherwise determined to be appropriate, solicit offers from additional firms through advertisement in the New York State Contract Reporter;
3. Evaluate offers received on the basis of the contractor's technical qualifications, financial stability, past performance for the NRGC, staff availability, experience, contract price, fee structure, compliance with bid requirements and any other necessary criteria;
4. Document the deliberative processes by which contractors are selected.

B. The NRGC shall document the solicitation of offers from contractors, the selection of contractors, acceptance of contracts and any protests received in response to the solicitation.

C. Sole Source Procurement The Commission, upon the adoption of these Guidelines, hereby waives the use of the procedure for selecting contractors outlined in section A of this Part 5 in those instances where it is determined by the Commission, that in the best interests of the NRGC, it is not possible or practicable to secure such contracts on a competitive basis due to the specialized or unique nature of the goods or services required. In such instance, the Executive Director or the Treasurer/Controller shall document the (1) unique nature of the requirement; (2) the basis upon which it was determined that there is only one known vendor able to meet the need; and (3) the basis upon which the NRGC determined the cost to be reasonable. All documentation shall be retained in the contract file.

D. Single Source Procurement The Commission may approve a single source procurement, which is one in which two or more vendors can supply the goods or services but one vendor is preferred over the others for reasons such as expertise or previous experience with similar contracts. In such instance, the Executive Director or the Treasurer/Controller shall demonstrate the rational basis for selecting a single vendor, which basis may include (1) past experience with a particular issue; (2) familiarity with specific agency operations; (3) experience with similar projects at other agencies or levels of government and (4) Such justification shall include the basis upon which the NRGC determined the cost to be reasonable.

E. The Commission, upon adoption of these Guidelines, hereby waives the use of the procedure for selecting contractors outlined in section A of this Part IV in those instances where the amount of a procurement contract is less than \$5,000 or where the Executive Director or the Treasurer/Controller determine that:

1. The procurement of such services cannot await the solicitation/selection of such contractor pursuant to this procedure; or
2. The services required are reasonably obtainable from a uniquely qualified personal services contractor.

F. In those instances where, pursuant to section C or D above, the Commission determines not to use the procedure outlined in Section A above to select contractors, the NRGC shall document and describe the procedure used to select such contractor.

G. Procurement contracts so approved containing a renewal option may be renewed by the Executive Director or the Treasurer/Controller, if determined by such person to be in the best interest of the NRGC, contingent upon the mutual written agreement of both contractual parties.

H. The Finance Committee of the NRGC shall approve every contract over \$100,000 or that will remain in effect for more than one year. The entire Commission shall approve any contract in excess of \$250,000.

I. Annually, the NRGC reviews the performance of service contract arrangements against expertise available in the NRGC member agencies to determine where and under what conditions certain contracts will be continued/discontinued.

J. Under certain circumstances the NRGC may amend existing approved contracts. The factors governing the consideration of such amendments shall include, but not be limited to, the following criteria:

1. The requirement for additional work to complete a particular project was unforeseen, it must be related to the scope of the original contract and must

be deemed necessary for the completion of that project. The cost (if any) of the additional work must be demonstrated to be reasonable and must be consistent with the rates charged in the contract.

2. All contract amendments require the mutual written agreement of both the NRGC and the Contractor.

6. Preparation of Annual Report on Procurement Contracts

A report shall be made to the Commission, on an annual basis, covering the status of all procurement contracts entered into. Such status report may be made as part of the annual report on procurement contracts. The Commission shall review and approve the annual procurement report .

- A. The NRGC shall prepare an annual report on procurement contracts which shall include:
 - 1. The Procurement Guidelines and any amendments to the guidelines since the last annual report;
 - 2. A list of procurement contracts entered into since the last annual report; including the selection process used to select contractors and the status of existing procurement contracts;
 - 3. A list of the fees, commissions and other charges paid to the contractor enumerated pursuant to clause 2 above;
 - 4. The results of the Procurement Integrity Officer's investigation of any allegation of improper lobbying influence; and
 - 5. A list of those contacts between corporation personnel involved in the determination of the procurement contract and employees, agents or consultants of any proposer competing for the contract, as required to be reported by Executive Order No. 127.
- B. The NRGC's annual report on procurement contracts may be made a part of any other annual report the NRGC is required to make.
- C. The NRGC shall make copies of its annual report on procurement contracts available to the public upon reasonable request.
- D. The NRGC will report annually on all procurement contracts pursuant to the provisions of Section 2879 of the Public Authorities Law.

E. Copies of the annual procurement report approved by the Commission shall be sent to the Office of the State Comptroller, Assembly Ways and Means Committee, the Senate Finance Committee, the Division of the Budget and the Department of Economic Development.

7. Types of Contracts with Trust for Which Minority Business Enterprises and Woman Owned Business Enterprises May Best Be Bid.

The NRGC shall, in order to encourage the use of Minority and Woman-Owned Business Enterprises (“MWBE”) in procurement contracts, solicit offers from such enterprises known to have experience in the area of the goods and services to be provided, regardless of the type of contract. The NRGC shall consult any list maintained by any state agency or department known to the corporation which identifies MWBEs by area of expertise and contact such enterprises to solicit their offers. Furthermore, if the performance of any procurement contract permits or requires the use of a subcontractor, these contracts shall require the prime contractor to act affirmatively to encourage participation by MWBEs in such subcontract and to report the nature and extent of such efforts to the NRGC. For the purpose of these Procurement Guidelines, the terms “Minority Business Enterprise” and “Woman-Owned Business Enterprise” shall have the respective meanings assigned to them in Sections 2879 (3) (c) and (e) of the Public Authorities Law.

For all other procurements defined in section 2879 in the Public Authorities Law, the procedures incorporated in the NRGC’s approved Agency Minority and Women-Owned Business Goal Plan (“Plan”) shall be strictly followed. This Plan and its procedures, which reflect the recent amendment requirements of Section 2879 of the Public Authorities Law are incorporated into these Procurement Guidelines by reference.

8. Omnibus Procurement Act

As referenced in Appendix A (Standard Clauses for NYS Contracts) the NRGC shall as necessary, prepare reports in compliance with the Omnibus Procurement Act of 1992.

9. Procurement Contracts with Former Directors, Officers or Employees of the NRGC

The NRGC may not enter into procurement contracts with former commission members, officers or employees of the corporation where such contracts would be in contravention of law, would create a conflict of interest or would create the appearance of impropriety.

10. Procedural Controls to Prohibit Improper Lobbying Influence

In compliance with Executive Order No. 127 (“EO 127”), the NRGC’s Internal Control Officer shall serve as the Procurement Integrity Officer, who shall be responsible

for ensuring the consistent and effective observance of the NRGC procedures for the exclusion of improper lobbying influence relative to all procurement contract awards of the NRGC. Decisions on the award of procurement contracts shall be based solely on the merits of the proposals, free from any improper lobbying influence. The Procurement Integrity Officer shall develop procedural controls, establish guidelines and procedures and take any steps as are necessary and/or appropriate to meet the specific requirements of EO 127, and to comply with the guidelines set forth below. The NRGC shall adopt such procedural controls as required by and as necessary for the day-to-day implementation of the requirements of the EO 127.

Contacts between any NRGC employee involved in the determination and /or award of a procurement contract and employees, agents, or consultants of a proposer relating to a proposal being considered by the NRGC, or any contact with anyone in the NRGC in any attempt to influence the procurement process, during the time in which a contract award is pending, is prohibited, except:

- (i) in the ordinary course of business where the proposer is already under contract with the NRGC;
- (ii) those authorized in the Request for Proposal; or
- (iii) those authorized in writing by the Procurement Integrity Officer subsequent to the submission of proposals by firms for the purpose of providing information to NRGC personnel to assist them in understanding and assessing the qualities, characteristics and anticipated performance of a product or service offered by the proposer. Contacts so authorized may only be between NRGC personnel involved in the determination of a procurement contract and employees, agents or consultants of the proposer who are qualified by technical or professional training, education or experience to explain, clarify, or demonstrate the characteristics and advantages of a product or service offered by the proposer.

The procedural controls developed by the Procurement Integrity Officer and adopted by the NRGC shall provide for appropriate contacts between NRGC staff and the employees, agents or consultants of a proposer for the purpose of negotiating contract terms after the evaluation of proposals and selection of a contractor have been completed.

The procedural controls must also require, during the preparation of specifications, or a request for submission of proposals for a procurement contract, or the pending of a contract award: (1) NRGC personnel to notify the Procurement Integrity Officer of all contacts with the employees, agents or consultants of any proposer competing for the contract award when the contract relates to a proposal being considered by the NRGC and any attempt by any person to influence the procurement process and (2) every proposer to report to the NRGC every contact by any employee, agent or consultant of the proposer with any NRGC or State employee regarding the contract under consideration.

In compliance with EO 127, the NRGC will take the following steps to meet the disclosure requirements prescribed therein related to procurements involving an annual expenditure in excess of fifteen thousand dollars:

- A. Potential contractors will be required in their bid or proposal documents to include the name, address, telephone number, place of principal employment and occupation of every person or organization retained or subsequently retained, employed or designated by or on behalf of the contractor to attempt to influence the procurement process and whether such person or organization has a financial interest in the procurement. Contractors shall inform the NRGC of the identity of any such persons or organizations authorized to contact the NRGC on their behalf.
- B. Prior to making an award of a procurement contract, the NRGC shall make a determination of responsibility of the proposed awardee. Potential contractors will be required, in their bid or proposal documents, to disclose finding of non-responsibility made within the previous five years.
- C. Any contacts from any source that reasonably appear to be an attempt to influence the procurement process shall be recorded by the NRGC upon any such contact, the information required to be submitted in subparagraph A above will be obtained.
- D. The NRGC shall maintain a written record of all persons and organizations identified in subparagraphs A and C above. Such record will be open to inspection by the public.
- E. No procurement contract shall be awarded to a contractor who has not disclosed accurate and complete information in a timely manner with respect to EO 127.
- F. The NRGC shall require the use of the forms attached hereto as Attachment 2 to assist with compliance with EO 127.
- G. Every procurement contract made subject to EO 127 shall contain a certification by the awardee that all information provided is complete, true and accurate, as well as a provision authorizing the NRGC to terminate such contract in the event such certification is found to be intentionally false or incomplete.

The NRGC shall incorporate a summary of the policy and prohibitions against improper lobbying influence and applicable NRGC procedures into its request for proposals or invitation materials or specifications for all procurement contracts and shall seek a written affirmation from all proposers as to their understanding of and agreement to comply with the same.

These controls shall be reviewed and analyzed annually by the Commission in accordance with the requirement of the EO 127.

H. Employee Reporting Requirements

Any NRGC officer or employee who becomes aware of any improper lobbying influence or any attempt to influence the procurement process shall immediately notify the Procurement Integrity Officer. The Procurement Integrity Officer shall review and immediately investigate any and all allegations of improper lobbying influence or attempt thereof, or any attempt to influence the procurement process. The proposer shall have an opportunity to be heard in response to any allegation. If the attempt to influence the procurement process is found to have occurred, then the NRGC may impose such sanctions as it deems appropriate, which may include but shall not be limited to the elimination of the proposal from consideration with respect to that contract award.

Acceding to improper lobbying influence or failure to report any attempt to influence the procurement process is a violation of NRGC policy and employee violations of this policy may be the basis for disciplinary action and, depending on the circumstances, may be a violation of Public Officers Law Section 73 (5) or 74, subject to enforcement by the State Ethics Commission. In addition, where such conduct violates the Public Officers Law, such matter shall be referred to the Office of the Inspector General and the State Ethics Commission, as may be appropriate.

11. Vendor Responsibility

In accordance with the guidelines set forth in the NYS Office of the State Comptroller's bulletin G-221, the NRGC shall make every effort to ensure that potential contractors are deemed responsible. The NRGC shall review such contractors to the extent that the NRGC is satisfied that the contractor satisfies the following criteria:

- (i) The contractor is legally authorized to do business in New York State.
- (ii) The contractor possesses the integrity to perform the contract.
- (iii) The contractor is financially capable of carrying out the contract.
- (iv) The contractor has performed satisfactorily on other government contracts.

12. Annual Review and Approval of Guidelines and Report of Procurement Contracts

The Commission shall review annually the NRGC's Procurement Contract Guidelines for compliance with applicable laws, rules and consistency with best practices. The Commission shall also adopt an annual Report of Procurement Contracts and disseminate it in accordance with Section 6(e) of these Procurement Guidelines.

13. Effect of Noncompliance with Guidelines

Failure by the NRC to comply with the provision of these Procurement Guidelines shall not be deemed to alter, or in any way affect the validity of, or modify the terms of, or impair any rights or privileges of the NRC under, any procurement contract entered into by the NRC.

ATTACHMENT 1

I. Type of Goods Purchased. The following is an illustrative (but not exclusive) list of types of goods purchased by the NRGC in the past and which may be purchased in the future.

Office Supplies

Stationary

Computer equipment, accessories and supplies

Telephone and accessories

Telecopiers and accessories

Photocopiers and accessories

Electric typewriters and accessories

Publications – Engineering, Legal, Finance, Government and Professional Directions

Mail – Related supplies – Overnight delivery services supplies

II. Personal Services.

1. At present, these required services fall into two categories of services:

- a) arts and cultural event performers
- b) part-time legal, audit & accounting assistance
- c) consulting related to specific programs or projects

2. Arts and cultural event performers and other demonstrators are occasionally employed on a performance basis by the NRGC for specific special events which have been sponsored by corporate contributors. Service agreements are to be used to record and document expected services and compensation rates are generally the usual performance rates for these entertainers.

3. Accounting assistance (CPA) is contracted for annually for the preparation of financial statements, review internal control procedures and review of the NRGC's investment practice performance against the NRGC's Investment Policy and the State Comptrollers Guidelines for Short-Term Investments, adopted by the NRGC. Cost proposals are made by auditors in response to a request for Proposal and the NRGC determines if the proposed rates are acceptable based on past experience. The NRGC is fully satisfied with this arrangement and considers that continuity in audit review by CPA firms essential to its operations. The NRGC is also subject to audit by the Office of the State Comptroller.

<u>Type of Personal Service</u>	<u>Description of Services</u>	<u>Reason for Use</u>
a. Legal	Provide legal services to litigation, and other matters deemed necessary by the Corporation.	Augment in – house staff; Provide expertise in specialized areas e.g., federal State & Municipal Tax law.)
b. Audit and Accounting	Provide audit services pertaining to the year – end preparation of financial statements of the NRGC in conformance with generally accepted accounting principles. Perform special audit services as required.	Augment in – house staff provide independent review as required by law.
c. Architectural	Provides professional architectural services to the NRGC.	Augment in – house staff; Provide additional expertise in special areas.
d. Engineering	Provide engineering services to the NRGC	As above
e. Management Information Services	Provide the NRGC with computer systems and performing services	Augment in–house staff; update existing Systems to accommodate new programs and to take advantage of new techno – logies.

f. Equipment Maintenance	Provide maintenance for the routine service and repair of office equipment, including but not limited to computers, photocopiers, and telecopiers	Augment in-house staff; ability to respond as needed; special skills to maintain product warranties.
g. Printing	Provide financial, technical, graphic, layout and printing services in connection with the corporation's annual report and any special reports and brochures that may be necessary or desirable.	Ability to handle large volume jobs rush basis; ability to handle color printing and graphics.
h. Minority – and Woman – Owned Business Enterprise Consultants	Provide technical assistance to minority and woman-owned business enterprises, to facilitate their participation in the NRGCC programs.	Augment in-house staff; provide on going advice and counsel over extended periods (e.g., through bid process
i. Other Services	As deemed necessary in the furtherance of the interests of the NRGCC.	

Attachment # 2

1. Contractor Disclosure of Contacts
2. Contractor Disclosure of Prior Non-responsibility determinations
3. Contractor Certification of Compliance with E.O. 127
4. Model Contract Termination Provision
5. Covered Agency or Authority Report of Contact Under E.O. 127
6. Compiled Record Under E.O. 127

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