

Troy Local Development Corporation
Procurement Process, Contract Award and Contract
Execution

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Procurement Process, Contract Award and Contract Execution.

Article1 - Procurement Policy, General Provisions

- A. Purposes and Policies. The underlying purpose and policies of this Procurement Policy are:
 1. to simplify, clarify, and modernize the manner in which supplies, services, and construction is procured by the Troy LDC;
 2. to permit the continued development of procurement policies and practices;
 3. to provide for increased public confidence in the procedures followed in public procurement;
 4. to ensure the fair and equitable treatment of all persons who deal with the procurement system of the Troy LDC;
 5. to foster effective broad-based competition within the free enterprise system;
 6. to provide safeguards for the maintenance of a procurement system of quality and integrity.
 7. to insure compliance with the Troy LDC Code of Ethics.
- B. Review of Policy. There will be an annual review of the Procurement Policy by the Treasurer and recommendation for changes will be sent to the Chairman.
- C. Law Applicable. Unless by the particular provisions of this Procurement Policy, the principles of law and equity, including the Uniform Commercial Code of the State of New York, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Procurement Policy.
- D. Requirement of Good Faith. This Procurement Policy requires all parties involved in the negotiation, performance, or administration of Troy LDC contracts to act in good faith.
- E. General Application. This Procurement Policy applies only to contracts solicited or entered into after the effective date of the Procurement Policy unless the parties agree to its application to a contract solicited or entered into prior to the effective date.
- F. Application to Troy LDC Procurement. This Procurement Policy shall apply to every expenditure of public funds by the Troy LDC under any contract, except that this Procurement Policy shall not apply to either grants or contracts between the Troy LDC and other governments.

G. Severability. If any provision of this Procurement Policy or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this Procurement Policy which can be given effect without the invalid provision or application, and to this end the provisions of this Procurement Policy are declared to be severable.

H. Definitions. The words defined in this Section shall have the meanings set forth below whenever they appear in this Procurement Policy, unless:

- (a) the context in which they are used clearly requires a different meaning; or
- (b) a different definition is prescribed for a particular Article or provision.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change Order means a written order directing the contractor to make changes.

Contract means all types of Troy LDC agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction.

Contract Modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor means any person having a contract with the Troy LDC.

Data means recorded information, regardless of form or characteristic.

Employee means an individual drawing a salary from the Troy LDC, whether elected or not, and any non-compensated individual performing personal services for any governmental body of the Troy LDC.

Governmental Designee means a duly authorized representative of the authority such as a member of the board or a member of an independent committee.

Grant by the Troy LDC means the furnishing by the Troy LDC of assistance, whether financial or otherwise, to any person/entity to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

Grant to the Troy LDC means the transfer of funds to the Troy LDC to support or stimulate programs to accomplish objectives that are locally defined and managed.

May denotes the permissive.

Other Governments means any federal or state agency, county, city, town, village, school district, fire district, etc.

Person/Entity means any business, individual, union, committee, club, other organization, or group of individuals.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation, and award of contract, and all phases of contract administration.

Professional Services means services rendered by members of a recognized profession or possessing a special skill. Such services are generally acquired to obtain information, advice, training or direct assistance.

Services means the furnishing of labor, time, or effort by a contract, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

Shall denotes the imperative.

Supplies means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Article 2 - Procurement Organization

Except as otherwise provided in this Procurement Policy, all rights, powers, duties, and authority relating to the final approval of all purchases remain with the Chairman and the Treasurer.

Article 3 - Source Selection, Contract Formation, Contract Approval and Award

A. Definitions of Terms Used in this Article.

Commodity is any movable, tangible article of trade or commerce.

Cost-Reimbursement Contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Procurement Policy, and a fee if any.

Established Catalog Price means the price included in a catalog, price list, schedule, or other form that:

- (a) is regularly maintained by a manufacturer or contractor;
- (b) is either published or otherwise available for inspection by customers;
- (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

Proposal the document submitted by the offeror in response to the RFP to be used as the basis for negotiations for entering into a contract. It is an offer which may be either unsolicited or submitted in response to an invitation from a contracting authority. A proposal is usually requested in cases where selection of a contractor is to be made on the basis of the performance that is offered rather than on that of price alone and may require an outline of details such as the vendor's qualifications and experience and the identification of problems and proposed solutions in addition to details of price.

Purchase Description means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made part of, the solicitation.

Quotations means to state a price for goods and/or services to be provided.

Request for Quotations (RFQ) means an informal solicitation or request for information, where oral or written quotes are obtained from vendors, without formal advertising. The quote shall include the specifications or scope of work and all contractual terms and conditions.

Request for Proposals (RFP) means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible Proposer means a proposer who has the capability in all respects to perform fully the contract requirements, and the integrity, reliability, experience, perseverance, capacity, facilities & equipment and credit which will assure good faith performance.

Standardization means the process of formulating and applying rules for an orderly approach to a specific activity for the benefit and with the cooperation

of all concerned. Standardization is based on the consolidated results of science, technique, and experience. It determines not only the basis for the present but also for future development, and it should keep pace with progress. Standardization is a tool to achieve savings.

B. Methods of Source Selection.

Materials, Supplies and Small Equipment.

1. All Troy LDC contracts for materials, supplies and small equipment involving an expenditure of up to five hundred (\$500) dollars shall be awarded by the Treasurer, upon approval of the Chairman, in compliance with the Troy LDC's Procurement Policy relating to price quotations.
2. All Troy LDC contracts for materials, supplies and small equipment involving an expenditure of more than five hundred (\$500) dollars shall be awarded by a resolution of the board.

Non Professional Services

1. All Troy LDC contracts for non professional services involving an expenditure of up to five hundred (\$500) dollars shall be awarded by the Treasurer, upon approval of the Chairman, in compliance with the Troy LDC's Procurement Policy relating to price quotations.
2. All Troy LDC contracts for construction involving an expenditure of more than five hundred (\$500) dollars shall be awarded by resolution of the board.

Professional Services.

1. All Troy LDC contracts for professional services involving an expenditure of less than five hundred dollars (\$500) shall be the treasurer, upon approval of the Chairman. Professional services involving an expenditure of more than five hundred dollars (\$500) will require a resolution of the board.
2. Even though competitive bidding is not required by law, alternative proposals or quotations will be secured by Request for Proposals, written or verbal quotations or by sole source when justified.

Execution of Contracts

All contracts regardless of dollar amount shall be executed by Chairman and approved as to form by the Troy LDC Counsel.

Monthly Reports

The Treasurer will report to the Board on a monthly basis the types of contracts awarded during the previous month.

Quotations

All purchases made by the Troy LDC shall adhere to the following price quotations:

- Any purchases made up to \$1,500 will not require any quotes.
- Any purchases made from \$1,501-\$5,000 will require two verbal quotes.
- Any purchases made from \$5,001-\$9,999 will require three written quotes from the vendor for commodities.
- Any purchases made from \$5,001-\$19,999 will require three written quotes from the vendor for services.

A good faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or quotations, the purchaser will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement.

Documentation is required of each action taken in connection with each procurement.

Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offeror. This documentation shall include an explanation of how the award will achieve savings or how the offeror was not responsible.

Insurance

The Troy LDC treats the procurement of insurance as a commodity, and as such, any solicitation for the purchase of insurance will require quotations as required by this procurement policy.

C. Sole Source Procurement.

Notwithstanding any other provision of this Procurement Policy, a contract may be awarded for a supply or service without securing two or more quotations, when the Treasurer determines in writing that there is only one source for the required supply or service. A written and dated determination of the basis for the

sole source determination, signed by the Chairman shall be included in the contract file.

Sole Source Procurement:

1. Only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation such as technical qualifications, ability to deliver at a particular time, or services from a public utility.
2. When a local vendor can provide the commodity or service with a better response time than a vendor from out of the area even though the out of area vendor may be cheaper.
3. On a case by case basis, and in connection with projects undertaken by the Troy LDC in furtherance of and/or in support of City and other public infrastructure projects and improvements, the Troy LDC may consider and approve sole source contracts in the form of design-build, construction manager at risk (CMAR), and/or guaranteed maximum price (GMP) agreements.

D. Confirming Orders Prohibited.

The procurement process known as "Confirming Orders" whereby an employee purchases a supply or service without prior authorization from the Chairman and then later submits a bill for payment or reimbursement, is prohibited unless the Chairman determines that the situation is critical for the Troy LDC to continue to provide essential services. A memo documenting the purchase should be attached to the reimbursement request.

E. Responsibility of Proposers.

1. Determination of Non- Responsibility. Any determination by the Treasurer that a proposer is not responsible shall be made in writing after consultation with the Troy LDC Counsel. The unreasonable failure of a proposer to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such proposer.
2. Right of Non-Disclosure. Information referred to in subsection (A) of this Section shall not be disclosed if it is material which is not eligible for release under the Freedom of Information Law.

F. Pre-Qualification of Suppliers.

Prospective suppliers may be pre-qualified for particular types of supplies or services. The Treasurer considers screening of potential vendors in which such factors as financial capability, reputation and management are considered in

order to develop a list of qualified vendors.

G. Types of Contracts.

Subject to the limitations of this Section, any type of contract which will promote the best interests of the Troy LDC may be used; provided that the use of a "cost plus a percentage of cost contract" is prohibited. A "cost reimbursement contract" may be used only when a determination is made in writing signed by the Purchasing Agent that such contract is likely to be less costly to the Troy LDC than any other type or that it is impracticable to obtain the supplies or services.

H. Multi-Year Contracts.

1. **Specified Period.** Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the Troy LDC provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.
2. **Determination Prior to Use.** Prior to the utilization of a multi-year contract, it shall be determined in writing by the Treasurer that:
 - a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - b) such a contract will serve the best interests of the Troy LDC by encouraging effective competition or otherwise promoting economies in Troy LDC procurement.
3. **Cancellation Due to Non-availability of Funds in Succeeding Fiscal Years.** When funds are not appropriated to support continuation of performance in a subsequent fiscal year, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

I. Record of Procurement Actions

1. **Contents of Record.** The Treasurer shall maintain a record listing all contracts made for a minimum of five years. The record shall contain:
 - a) each contractor's name;
 - b) the amount and type of each contract; and
 - c) listing of the supplies, services, or construction procured under each contract.
2. **Submission to the Board of the Authority.** A copy of such record shall be submitted to Board of the Authority on an annual basis. The record shall be available for public inspection.