

WESTCHESTER MEDICAL CENTER

Administrative: Policy & Procedure

Manual Code: LD-1A

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SUBJECT: **Procurement Contracts**

EFFECTIVE: 8/2010

__ REVIEWED OR X REVISED date: 8/2021

Applicable Campus:

X MidHudson

X Valhalla

Patient population:

___ Neonate ___ Pediatric

___ Adult ___ Behavioral Health X Not applicable

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PURPOSE

To provide comprehensive guidelines for the Westchester County Health Care Corporation's (WCHCC) use, awarding, monitoring, and reporting of procurement contracts.

SCOPE

Applies to all contracts entered into by WCHCC for the procurement of goods, professional and non-professional services, and construction.

POLICY STATEMENT

It is the policy of the Westchester County Health Care Corporation (WCHCC), as operator of Westchester Medical Center (WMC), that all contracts entered into by, or on behalf of, WCHCC comply with the guidelines set forth herein.

AUTHORING DEPARTMENT

Office of Legal Affairs

PROCEDURE

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APPENDICES

Appendix A: Sole Source Justification Form

WESTCHESTER COUNTY HEALTH CARE CORPORATION PROCUREMENT POLICY AND PROCEDURE

I. INTRODUCTION

This Procurement Policy (“Policy”) applies to contracts entered into by Westchester County Health Care Corporation (“WCHCC” or the “Corporation”) for the procurement of goods, services, and construction. Under New York State law, WCHCC is permitted to use a number of procurement approaches and has the authority to adopt its own policies consistent with those approaches. This Policy provides basic guidelines concerning the administration, oversight, and award of contracts that are applicable to all WCHCC procurements.

Moreover, as a public benefit corporation, WCHCC procures most goods, services, and construction through Competitive Contracting¹ processes. This Policy includes guidelines for the Competitive Contracting processes used by WCHCC including competitive bidding, requests for proposals, and requests for quotations. There are, however, certain limited circumstances when WCHCC is not required to procure goods and services through Competitive Contracting. Those exceptions also are set forth in this Policy.

¹ “Competitive Contracting” refers to the procurement of commodities, construction, non-professional services, and professional services on a competitive basis.

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This Policy has been approved and adopted by the WCHCC Board of Directors pursuant to the authority granted to it under the Public Authorities Law. This Policy and any amendments hereto will be presented annually to the WCHCC Board for its approval.

II. OVERVIEW OF COMPETITIVE CONTRACTING REQUIREMENTS

Generally, contracts in the categories described below must be procured through a competitive process. It is important to note, however, that these Competitive Contracting requirements are subject to a number of exceptions which are also explained throughout this Policy.

| Competitive Contracting Processes | Contract Categories |
|--|---|
| Formal Sealed Bids (See page 6) | <ul style="list-style-type: none">• Contracts for Construction/Public Work² for \$35,001 or More• Contracts for the Purchase of Commodities Necessary for the Completion of Construction/Public Work for \$20,001 or More |
| Request for Proposals (See page 9) | <ul style="list-style-type: none">• Contracts for the Purchase of Commodities (not for construction) or Service Work for \$20,001 or More• Contracts for Medical Projects (as defined in Article VII) that would otherwise be subject to Formal Sealed Bidding• Contracts for Professional Services for \$500,001 or More |
| Request for Quotations (See page 17) | <ul style="list-style-type: none">• Contracts for the Purchase of Commodities Necessary for the Completion of Construction/Public Work for an amount between \$10,001 and \$20,000• Contracts for Construction/Public Work for an amount between \$20,001 and \$35,000• Contracts the Purchase for Commodities (not for construction) or Service Work for an amount between \$10,001 and \$20,000• Contracts for Professional Services for an amount between \$100,001 and \$500,000 |

III. POLICY GUIDELINES APPLICABLE TO ALL WCHCC CONTRACTS

² The term "Public Work" refers to: (i) projects for construction or reconstruction done on behalf of a public entity and governed by Article 8 of the New York State Labor Law; and (ii) building service contracts involving the care or maintenance of an existing building, transportation of office furniture or equipment from such a building, the transportation or delivery of fossil fuel to such a building or for a contractor under a contract with a public entity to furnish services through the use of building service employees and governed under Article 9 of the New York State Labor Law.

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WCHCC adheres to certain general policy guidelines when entering into procurement contracts. Many of these guidelines are required by statute (as noted within the Policy), and others have been adopted by WCHCC to ensure that the procurement process is fair and administratively efficient. In addition to the Competitive Contracting procedures set forth in this Policy, the following guidelines are applicable to all procurements by WCHCC:

A. Execution of Contracts All WCHCC contracts shall be in writing and executed only by those persons duly authorized to enter into and execute contracts on WCHCC's behalf. Once contracts are drafted, reviewed by, and released for signature by the Office of Legal Affairs, they may be executed by any one of the persons holding the following titles:

- Senior Vice Presidents, for contracts in the area for which they are responsible, up to a contract value of \$250,000;
- Executive Vice Presidents, for contracts valued at greater than \$250,000 up to \$500,000;
The Sr. Executive Vice President, for contracts valued at greater than \$501,000 to \$3 million;
- President and CEO, for any contract valued at greater than \$3 million; and
- Vice President, Medical Staff Services (limited to immigration applications).

Those persons authorized to execute contracts on behalf of the Corporation may designate, by name and title, up to three subordinate officers or employees of the Corporation authorized to execute contracts in the absence or inability to act of the person making the designation. Any such designation shall be in writing, and may be revoked at any time by the person making the designation or the WCHCC Board of Directors.

B. Minority or Women Owned Business Enterprises

WCHCC encourages the participation of New York State certified "Minority or Women Owned Business Enterprises" ("MWBE") in WCHCC procurements. Under Article 15-A of the New York Executive Law, and pursuant to the definition found in Executive Law § 310., an MWBE is any for-profit firm that is at least fifty-one percent (51%) owned, operated and controlled by a U.S. citizen or permanent resident alien who is either a minority and/or woman and is certified by the New York State Division of Minority and Women's Business Development (the "DMWBD"). Minority groups that are eligible for MWBE certification include: (i) Black persons having origins from any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central American or South American descent, regardless of race; (iii) Native American or Alaskan Native persons having origins in any of the original peoples of North America; (iv) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or the Pacific Islands. Businesses interested in becoming a certified New York State MWBE can apply for certification online at <https://ny.newnycontracts.com/FrontEnd/StartCertification.asp?TN=ny&XID=5226>

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It is the policy of WCHCC to ensure that MWBEs are given a full opportunity to provide goods and services sought by the Corporation. Each year WCHCC submits an annual MWBE goal plan to New York State that sets forth its goals for MWBE participation in WCHCC procurements and describes WCHCC's ongoing use of, and outreach to, MWBE firms. WCHCC's goal plan can be found online at <https://ny.newnycontracts.com>.

To ensure that WCHCC meets its MWBE goals, WCHCC staff must take the following steps prior to soliciting or executing a contract for goods or services:

- Determine whether a New York State certified MWBE firm exists that provides the good or service by checking the New York State MWBE directory online at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=1656>
- Include WCHCC's standard MWBE language in bid solicitations and requests for proposals and, for goods or services where qualified MWBE vendors exist, include an expected rate of MWBE participation in the procurement.

Once a contract including an MWBE participation rate has been awarded, WCHCC staff must work with the Purchasing and Legal Departments to ensure that MWBE participation is verified in accordance with regulatory standards and any MWBE joint venture meets industry standards. Please note that in very limited circumstances WCHCC may, after a detailed showing of good faith by a contractor, waive a contractor's obligation to meet certain MWBE utilization requirements. Any requests for contractor waivers will be closely examined on a case-by-case basis by the operational department, the WCHCC Purchasing Department and/or Office of Legal Affairs.

C. Service-Disabled Veteran-Owned Business Enterprises Article 17-B of the New York Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"). WCHCC recognizes the need to promote procurement opportunities for certified SDVOBs, and encourages their maximum feasible participation in the performance of WCHCC contracts.

A SDVOB is a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation, including not-for-profit corporations that is: (1) at least fifty-one percent (51%) owned by one or more service-disabled veterans; (2) an enterprise in which such service-disabled veteran ownership is real, substantial, and continuing; (3) an enterprise in which such service-disabled veteran ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (4) an enterprise authorized to do business in this State and is independently-owned and operated; (5) an enterprise that is a small business as defined herein; and (6) certified by the New York State Office of General Services. Businesses interested in becoming a certified NYS SDVOB can find the forms for certification online on the Office of General Services website at <http://www.ogs.ny.gov/Core/SDVOBA.asp>.

It is the policy of WCHCC to ensure that SDVOBs are given a full opportunity to provide goods and services sought by the Corporation. Each year WCHCC will submit an annual SDVOB goal plan to New York State that sets forth its goals for SDVOB participation in WCHCC

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procurements and describes WCHCC's ongoing use of, and outreach to, SDVOB firms.³ For contracts for commodities, services and technology valued over \$25,000 and for construction contracts valued over \$100,000, WCHCC will determine if there are opportunities for subcontracting and other meaningful participation in the contract by SDVOBs.

To ensure that WCHCC meets its SDVOB goals, WCHCC staff must take the following steps prior to soliciting or executing a contract for goods or services:

- Determine whether a New York State certified SDVOB firm exists that provides the good or service by checking the New York State SDVOB directory online at <http://www.ogs.ny.gov/Core/SDVOBA.asp>
- Include WCHCC's standard SDVOB language in bid solicitations and requests for proposals and, for goods or services where qualified SDVOB vendors exist, include an expected rate of SDVOB participation in the procurement.

Once a contract including an SDVOB participation rate has been awarded, WCHCC staff must work with the Purchasing Department and Office of Legal Affairs to ensure that SDVOB participation is verified in accordance with regulatory standards and any SDVOB joint venture meets industry standards. Please note that in very limited circumstances WCHCC may, after a detailed showing of good faith by a contractor, waive a contractor's obligation to meet certain SDVOB utilization requirements. Any requests for contractor waivers will be closely examined on a case-by-case basis by the Office of Legal Affairs.

In order to promote the use of MWBEs and SDVOBs, the WCHCC will solicit offers from such firms known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. To foster increased use of MWBEs and SDVOBs, a single proposal may be sought, negotiated and accepted for discretionary purchases of goods and/or services not exceeding \$500,000, in the aggregate including all amendments, from a NYS-certified MWBE or an SDVOB that offers a reasonable price for such goods and/or services. The award of such proposal requires the written approval of an Executive Vice President. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the approving Executive Vice President.

D. Award of Contracts Involving Former WCHCC Officers or Employees No former WCHCC officer or employee shall, within a period of one (1) year after the termination of his or her services or employment, provide goods or services to, and receive compensation from, WCHCC for the rendering of such goods or services unless approved in advance by the New York State Ethics Commission. Former WCHCC officers and employees who were designated by WCHCC as policy makers may not appear, practice, participate, or otherwise render services

³ While Article 17-B sets a statewide goal of 6% for SDVOB contracts, the statute also requires the goals for each WCHCC contract to be set based on the availability of SDVOBs capable of performing work under the contract.

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before WCHCC in connection with any case, proceeding, application, or transaction concerning any matter that was directly related to that person's former tenure at WCHCC. [PAL § 2879(3)(g)]

E. Board Waiver of Requirements for Competitive Selection of Contractors

The WCHCC Board may, by resolution, waive requirements for the competitive selection of contractors for a specific procurement that otherwise would be awarded on a competitive basis when such waiver is in the best interest of WCHCC. Accordingly, the Board of Directors may, upon careful deliberation and a vote of 2/3 of the Directors present at a meeting of the Board at which such contract is presented, waive the selection of contractors on a competitive basis when doing so is in the best interest of the Corporation. [PAL § 2879(3)(b)(i)]

IV. BOARD APPROVAL NECESSARY FOR CERTAIN CONTRACTS

Prior to the execution of any of the below listed contracts, the essential terms of such contracts shall be presented to the WCHCC Board of Directors by the President/CEO or his authorized designee, and executed only after review and approval by the Board at a regular or special meeting.

1. Any contract involving services reasonably expected to total \$5,001 or more and to be rendered over a period greater than one (1) year (exclusive of any option by the Corporation for renewal) shall require Board approval, as well as annual review by the Board [PAL § 2879 (3)(b)(ii)];
2. Any academic affiliation with an accredited medical school;
3. Any contract to borrow or loan monies of the Corporation;
4. Any contract for the purchase or sale of real property;
5. Any lease by the Corporation of real property from others with an initial term in excess of 10 years (exclusive of any option by the Corporation for renewal);
6. Any "Installment Purchase Contract" as defined under § 109(b) of the New York General Municipal Law. Such contracts include lease purchase, installment sales, and other agreements for the financing of equipment, machinery, or other apparatus;
7. As more fully set forth in Article VII below, contracts for substantial Medical Projects, defined for purposes of this Policy as those reasonably expected to total \$500,000 or more, that are procured by RFP and awarded to a proposer whose total proposal does not offer either the lowest net cost or the greatest net revenue, as applicable [PAL § 3303(9)(d)]; and
8. Any contract for the annual auditing and examination of the accounts of WCHCC.

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V. INTRODUCTION TO COMPETITIVE CONTRACTING

It is the declared policy of the State of New York that contracts for public works and public purchases be procured on a competitive basis so as to ensure the prudent and economical use of public moneys and to ensure the acquisition of goods and services of maximum quality at the lowest possible price. [GML § 100-a] As a public benefit corporation, WCHCC procures most goods, supplies, products, construction items and services through Competitive Contracting processes.

A. Competitive Contracting Approaches Competitive Contracting refers to methods of procuring commodities (goods, supplies, products, construction items, or other standard articles of commerce), construction, and services on a competitive basis. WCHCC uses three approaches to Competitive Contracting.

- 1. Invitation for Bids (IFB)** Contracts must be awarded to the lowest responsive and responsible bidder meeting the specifications of an invitation for sealed bids and furnishing the required security, as applicable.
- 2. Request for Proposals (RFP)** Contracts for complex procurements often requiring specialized skills or expertise are awarded, after the evaluation of proposals, to the proposer meeting the specifications who offers the “best value.” Overall cost must be a major criterion but need not be the determinative factor in awarding the contract.
- 3. Request for Quotations (RFQ)** Contracts for standardized products or services are awarded to the supplier or service provider who can best meet detailed specifications. Overall cost must be a major criterion but need not be the determinative factor in awarding the contract.

The specific contract requirements and procedures for, as well as the exceptions to, each Competitive Contracting method are discussed in the following sections of this Policy: Article VI (Formal Sealed Bids), Article VII (Requests for Proposals) and Article IX (Requests for Quotations).

B. General Exceptions to Competitive Contracting Requirements There are a number of exceptions to the general rule that WCHCC must procure contracts competitively. The following types of contracts are exempt from Competitive Contracting requirements and need not be procured using the approaches set forth above:

- 1. Contracts for Professional Health Care Services.** Contracts for professional health care services including, but not limited to, services performed by health care agencies, physicians, dentists, physician’s assistants, home health and personal care aides, occupational, speech, respiratory and physical therapists, nurses, nurses’ assistants, medical and laboratory technicians, diagnosticians, social workers, psychiatric workers, veterinarians, and persons who provide care, treatment, counseling, case management, rehabilitative or preventative services to the mentally ill, developmentally disabled and those suffering from the disease of alcoholism or substance abuse are exempt from Competitive Contracting. [Case Law]

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- 2. Emergency Procurements.** In an emergency, contracts may be procured without complying with Competitive Contracting requirements. However, a reasonable effort should be made to obtain at least three oral price quotes. For procurement purposes an emergency occurs when there is “a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or life, health, [or] safety . . . require immediate action which cannot await competitive bidding or competitive offering . . .” The failure to properly plan in advance, which results in a situation where normal practices cannot be followed, does not constitute an emergency. All emergency procurements must be supported by a written memorandum that: (i) sets forth facts sufficient to justify awarding the contract on an emergency basis; (ii) is signed by a Senior Vice President or higher ranking employee or officer of WCHCC; and (iii) is submitted to the Office of Legal Affairs for review and approval prior to the procurement or commencement of the required work or services. [GML § 103(4)]
- 3. Group Purchasing.** Purchases made through a Group Purchasing Organization or group purchasing arrangements with other hospitals, medical schools, nutritional programs receiving federal, state or local funding, or other health related facilities having or using hospital services are exempt from Competitive Contracting requirements. [GML § 103(8); Public Health Law § 2803-a]
- 4. Purchases made through Contracts Procured by Certain Governmental Entities.** Purchases of goods and services made from vendors in accordance with the terms of contracts procured by the NYS Office of General Services, Westchester County, or the United States of America or any agency thereof, and awarded to the lowest responsible bidder or on the basis of best value are exempt from Competitive Contracting requirements. [GML § 103(16); PAL § 3303(8)]
- 5. Purchases made from Preferred Sources.** In order to advance certain social and economic goals, state law requires public benefit corporations such as WCHCC to purchase certain commodities and services from designated organizations when those commodities or services meet the governmental entities’ requirements for form, function, and utility. Purchases from preferred sources are exempt from Competitive Contracting requirements. Preferred sources are designated by law and include: Corcraft, Industries of the Blind of NYS, NYS Industries of the Disabled, and the Office of Mental Health. [State Finance Law § 162]
- 6. Purchases made from a Single or Sole Source.** Procurements for which only one contractor, supplier, manufacturer, or service provider is capable of supplying the required commodity or service are exempt from Competitive Contracting requirements. All sole source procurements must be supported by a single/sole source justification form that is signed by a Senior Vice President or higher ranking employee or officer of WCHCC and submitted to the Office of Legal Affairs for review and approval prior to the procurement or commencement of the work or services. The sole source justification form is attached to this Policy as Appendix A. [Case Law]

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7. **Recycled Products.** To the extent that recycled products meet contract specifications and the price of such products is reasonably competitive, such products may be purchased notwithstanding Competitive Contracting requirements. [GML § 104-a]
8. **Government Surplus/Second Hand Supplies.** Surplus and secondhand supplies, material or equipment may be purchased from the State of New York or any other political subdivision of the State without adhering to Competitive Contracting requirements. [GML § 103(6)]
9. **Standardization.** Upon the adoption of a resolution by a vote of at least three-fifths of all members of the WCHCC Board of Directors, the Corporation may resolve to standardize its purchases by specifying a particular brand name or make of equipment, material, products, or supplies to the exclusion of all others. A standardization resolution must state that, for reasons of efficiency or economy, there is a need for standardization and must contain a full explanation of the reasons for its adoption. The resolution must also declare why, as a matter of fact and not mere opinion, efficiency or economy will be served. In cases where the Corporation has standardized on a particular item that in fact can be purchased only from a single source (such as the manufacturer or an agent with an exclusive franchise), the purchase is exempt from Competitive Contracting requirements pursuant to the single/sole source exception discussed above. [GML § 103(5); NYS Comptroller Opinion No. 82-44, 90-45]

VI. FORMAL SEALED BIDS

- A. **When to Use Formal Sealed Bids** Unless there is an applicable exception, the following contracts related to construction or “Public Work”⁴ must be procured through formal sealed bidding:
 1. **Contracts for Construction/Public Work for \$35,001 or More.** Contracts for construction or the performance Public Work, for which the reasonably expected aggregate amount of all purchases of the same services to be made within 12 months is \$35,001 or more, must be procured through a formal IFB.
 2. **Contracts for the Purchase of Commodities Necessary for the Completion of Construction/Public Work for \$20,001 or More.** Contracts for the purchase of commodities and incidental services, such as installation of equipment, that are necessary for the completion of Public Work or construction, for which the reasonably expected aggregate amount of all purchases of the same goods to be made within the 12 months is \$20,001 or more must be procured through a formal IFB.
 3. **Prohibition against Segmentation.** Purchases of commodities, services, or technology shall not be artificially divided for the purpose of avoiding the monetary thresholds for formal sealed bids set forth above. Further, a change or a renewal to a contract that was valued below the threshold for formal sealed bids will not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services, or technology from the same vendor within the twelve-month

⁴ As defined in footnote 2 above.

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period commencing on the date of the first purchase under said contract to an amount greater than the competitive bidding threshold amount. [GML § 103(1)]

B. Sealed Bidding Process - Invitation for Bids

1. **Public Notice** The IFB must be published in at least one newspaper of general circulation and contain a statement of the time and place where bids will be publicly opened and read. [GML § 103(2)] At least five (5) days must elapse between the date the advertisement is first published and the date on which the bids are opened. For contracts reasonably expected to total \$15,000 or more, the IFB must also satisfy the additional publication requirements set forth in Article X of this Policy.
2. **Bidder Qualifications**. __WCHCC may, in its sole discretion, establish guidelines governing the qualifications of bidders seeking to bid or enter into such contracts. Further, WCHCC may elect to maintain a list of qualified bidders and restrict bidding to those who have qualified prior to the receipt of bids pursuant to its guidelines in accordance with the procedures set forth in General Municipal Law Section 103(15). [GML § 103(15)]
3. **Restricted Communications** For contracts subject to the sealed bidding process that are reasonably expected to total \$15,001 or more, the sealed bidding process must comply with the restrictions on communications between WCHCC and prospective bidders set forth in Article VIII of this Policy.
4. **Contents**
 - a. **Specifications**. The IFB must include specifications setting forth the technical requirements for materials, products, or services, as well as the criteria for determining whether these requirements are met. Specifications can be in the form of a detailed description of the required supplies, equipment or services, including, as appropriate, descriptions of raw materials and construction methods. These are known as “design” specifications. Specifications also can be set forth in terms of the tasks that the goods or services are intended to perform, or in terms of standards of performance. These are known as “functional” or “performance” specifications. Specifications should be set forth in a manner that will maximize competition, and be as clear and precise as is reasonably practicable.
 - b. **Wick’s Law**. IFBs for the construction, re-construction, or alteration of a building that exceeds \$1.5 million dollars must contain separate specifications and require the submission of separate bids for: (i) plumbing and gas fittings; (ii) steam heating, hot water heating, ventilating and air conditioning apparatus; and (iii) electric wiring and standard illuminating fixtures. [GML § 101(1)]
 - c. **Applicable Law**. The IFB must include a notice that a contract award is subject to applicable provisions of federal, state, and local laws and regulations.

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- d. **Reservation of Rights.** The IFB must expressly state that WCHCC reserves the right to waive any informalities related to, and to reject any and all bids received in response to, the IFB.
- e. **Non-Collusion.** The IFB must include and require bidders to submit a statement of non-collusion that contains the language set forth in General Municipal Law § 103-d(a).
- f. **Prevailing Wage.** The IFB must indicate that the payment of prevailing wages and supplements including, but not limited to, health, welfare, and pension benefits to each laborer, worker, or mechanic employed by the successful bidder in accordance with the provisions of Labor Law § 220 is a requirement of the contract.
- g. **Sealed Subcontractor Lists.** IFBs for the construction, re-construction, or alteration of a building costing \$1.5 million dollars or less must require bidders to submit a separate sealed list that names each subcontractor that the bidder will use to perform work on the contract and the agreed amount to be paid to each for: (i) plumbing and gas fittings; (ii) steam heating, hot water heating, ventilating and air conditioning apparatus; and (iii) electric wiring and standard illuminating fixtures. [GML § 101(1)]
- h. **Participation by New York State Suppliers and Subcontractors.** The following policies are intended to promote the participation of New York State suppliers and subcontractors for contracts procured through sealed bids [PAL § 2879(3)(i)]:
 - i. WCHCC shall include in all bid documents a statement that information regarding the availability of NYS suppliers and subcontractors and M/WBEs may be obtained from the New York State Department of Economic Development, and that it is the policy of New York State to encourage the use of NYS Business Enterprises and M/WBEs in the procurement of goods and services.
 - ii. WCHCC shall include on all bid documents a statement notifying potential bidders located in foreign countries that WCHCC may assign or otherwise transfer or offset credits created by such procurement contracts to third parties located in New York State in accordance with the written directions of the New York State Commissioner of Economic Development.
- i. **Participation by New York State Business Enterprises.** All contracts subject to the sealed bidding process must comply with the requirements to ensure participation of NYS Business Enterprises set forth in Article XI of this Policy.
- j. **Project Labor Agreements.** WCHCC may, in its discretion and in consultation with the Office of Legal Affairs, require, as a condition of the award of any contract procured through the sealed bidding process, that a successful bidder enter a Project Labor Agreement in accordance with Labor Law § 222.

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5. **Receipt, Opening and Handling of Bids** All bids received must be publicly opened at the time and place specified in the advertisement. At least five (5) days must elapse between the date the advertisement is first published and the date on which the bids are opened. [GML § 103(2)]
- a. **Late Bids.** Late bids, regardless of the circumstances, may not be accepted.
 - b. **Withdrawal of Bids.** A bidder may withdraw or modify a bid by giving written notice prior to the opening of bids. If a bid is withdrawn prior to the opening of bids, any bid bond or bid deposit will be returned to the bidder. However, a bid bond or bid deposit shall be forfeited by a bidder that withdraws its bid after the opening of bids if that bidder otherwise would have been the lowest bidder. WCHCC shall return all documents relating to a withdrawn or modified bid.
6. **Awarding of Contracts** The contract must be awarded to the lowest responsible, responsive bidder. [GML § 103(1)] Only the evaluation factors stated in the IFB may be considered in determining the lowest responsible and responsive bidder.
- a. **Responsibility.** In determining whether a bidder is responsible WCHCC may consider many factors including, but not limited to: (i) the bidder's financial and organizational capacity, (ii) the bidder's legal authority to do business, (iii) the integrity of the of the bidder's principals and contract managers, (iv) the bidder's history of compliance with New York State Labor Law requirements, if applicable, and (v) the past performance of the bidder on prior government contracts. In determining responsibility, WCHCC must also consider whether or not the bidder, or any "substantially owned-affiliated entity" (as defined by NY Labor Law 220(5)(g)) has been found to be in violation of the Davis-Bacon Act⁵, the Copeland Act⁶, or the Contract Work Hours and Safety Standards Act⁷.
 - b. **Allowances.** Where a responsible and responsive bidder's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by WCHCC, the gross price shall be reduced by the amount of such allowance for the purpose of determining the lowest bid. [GML § 103(1)]
 - c. **Identical Prices.** Where two or more responsible and responsive bidders submit identical bids as to price, WCHCC may award the contract to any such bidder. [GML § 103(1)] WCHCC may engage in post-bid, pre-award negotiations with the lowest responsible and responsive bidder to gain cost concessions.
 - d. **Post-Bid Negotiation.** WCHCC may negotiate more favorable terms and conditions with the lowest responsible and responsive bidder, provided there is no increase in price.

⁵ [40 U.S.C. 3144.](#)

⁶ [18 U.S.C. 874](#) and [40 U.S.C. 3145.](#)

⁷ [40 U.S.C. 332.](#)

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- e. **Concessions.** WCHCC may not make any concessions to the lowest responsible and responsive bidder.
- f. **Bid Mistake.** If a unilateral error or mistake is discovered in a bid, the bidder may withdraw it after showing: (1) the mistake is known or was made known to WCHCC's Designated Contact before the award of the contract or within three days after the opening of the bid, whichever period is shorter; (2) the price bid was based on an error of such magnitude that enforcement would be unconscionable; (3) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; (4) the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place WCHCC in status quo ante. The sole remedy for a bid mistake in accordance with this section shall be withdrawal of that bid and the return of the bid bond or other security, if any, to the bidder. Thereafter, WCHCC may, in its discretion, award the contract to the next lowest responsible bidder or rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited. [GML § 103(11)]
- g. **Rejection of All Bids.** WCHCC may, in its sole discretion, reject all bids and re-advertise for new bids. [GML § 103(1)]

VII. REQUESTS FOR PROPOSALS

A. **When to Use RFPs** The following contracts must be procured through the Request For Proposals process:

1. **Contracts for the Purchase of Commodities (not for construction) or Service Work for \$20,001 or More** Contracts for the purchase of commodities (unrelated to the completion of Public Work⁸) or service work reasonably expected to total \$20,001 or more may be procured by RFP and awarded on the basis of "best value" as defined by Section 163 of the State Finance Law.⁹ [GML § 103(1)] As used above, a commodity is a standardized good that is interchangeable with other commodities of the same type. Service contracts that may be procured by RFP include but are not limited to janitorial and service contracts.¹⁰
2. **Contracts for Medical Projects Involving: (i) Equipment or Devices Costing \$20,001 or More or (ii) Non-Professional Services Costing \$35,001 or More.** Medical Projects

⁸ As defined in footnote 2 above.

⁹ See definition of Best Value in Section VII(B) below.

¹⁰ New York Bill Jacket, 2012 A.B. 8692, Ch. 2.

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must be procured by RFP. The term “Medical Project” refers to contracts for: (i) the acquisition of medical equipment or devices reasonably expected to total \$20,001 or more; or (ii) the procurement of services necessary to install, erect, or assemble structures or facilities to house or render operational such medical equipment or devices reasonably expected to total \$35,001 or more. As used above, “medical devices or equipment” means substantial, durable apparatus, equipment, devices, or systems used to: (i) care for, treat, or diagnose diseases or injuries; or (ii) relieve the pain and suffering of the sick. Medical Projects do not include contracts for ordinary supplies and equipment expended or used in the customary care and treatment of patients.

3. Contracts for Professional Services for \$500,001 or More. Contracts for professional services for which the total cost of services is reasonably expected to be \$500,001 or more must be procured by RFP. Professional services (sometimes referred to as personal services) are services that involve specialized skills, expertise, and the exercise of judgment and discretion.

a. **Examples of Professional Services.** Examples of professional services contracts include:

- Contracts with teachers, lecturers and other educational professionals or experts;
- Contracts for the services of attorneys, accountants, auditors, or financial advisors;
- Contracts for the services of licensed architects, professional engineers, or land surveyors licensed and registered in the State of New York;
- Contracts for construction management services that include a maximum cost for the project;
- Contracts for the services of expert witnesses for use in, or in anticipation of, an adjudicatory proceeding or litigation; and
- Contracts with banks and financial institutions licensed or chartered to do business in the State of New York for the deposit of funds, including Trust Fund Agreements, Escrow Agreements and other fiduciary services, provided that such agreements shall be consistent with (i) the requirements of applicable law; and (ii) any policies now or hereafter established by the Board of Directors of the Corporation, relating to such agreements;
- Procurements of Insurance, Surety Bonds, Title Insurance or Title Examination Services;
- Contracts for Advertising, including Public Notices;
- Mixed Purchases of Technology and Professional Services: Purchases of certain technological equipment may also involve the purchase of professional

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services to design, maintain, or support the equipment. Such a contract will be considered a professional services contract if: (i) the professional services component is the predominant part of the contract; and (ii) there is an inextricable integration of professional services and physical components. Factors to consider in assessing whether a contract for technological equipment and services is exempt from Competitive Contracting requirements include:

- The amount of time and effort involved in tailoring prepackaged or “canned” software;
- The degree of customizing necessary;
- The amount of time and effort involved in personnel training services provided by the vendor;
- The relative cost of prepackaged software and services as compared to custom software and services.

b. **Exception for Professional Health Care Services.** As explained in Article V of this Policy, contracts for professional health care services are exempt from Competitive Contracting requirements including the RFP process.

B. Requests for Proposals Process In the RFP process, a prospective vendor/contractor submits a proposal that offers a solution to the objectives, problem, or need specified in the RFP and explains how it will meet or exceed the RFP requirements. A RFP is generally used for the procurement of services or technology where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (“best value”). In addition, WCHCC’s enabling legislation authorizes the corporation to procure Medical Projects, which would otherwise be subject to sealed bidding, through the RFP process.

1. RFP Process for Contracts for the Purchase of Commodities (not for construction) or Service Work for \$20,001 or More. As noted above, contracts for the purchase of commodities (unrelated to the completion of Public Work) or service work reasonably expected to total \$20,001 or more (hereinafter “Purchase Contracts”) may be procured by RFP and awarded on the basis of “best value” as defined by Section 163 of the State Finance Law.

a. **Information Required in the Purchase Contract RFP.** The RFP shall include the following information:

i. **Purpose/General Information.** A general description of the goods and/or services WCHCC seeks, the name of the Designated Contact for the procurement at WCHCC for information or questions related to the procurement, the number of copies of the proposal required for submission, a timetable of dates relevant to the proposal submission, including the proposal

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- deadline, and a notice that the contract award is subject to the applicable provisions of federal, state, and local laws, regulations, and executive orders.
- ii. **Specifications.** Specifications may include a detailed description of the goods to be purchased and/or a statement of the scope of the services to be performed, a description of the materials, equipment and methods that are to be used to deliver the services, the timetable of dates for tasks to be completed, the goals sought to be accomplished, performance standards to be met and tests to be applied to determine if the standards are met, required qualifications of proposers, number and type of required references, and financial and other necessary information.
 - iii. **Participation of NYS Business Enterprises.** The RFP must include information regarding requirements to ensure participation of NYS Business Enterprises in accordance with Article XI of this Policy.
- b. **Submission of Proposals in Electronic Format.** Responses to RFPs for Purchase Contracts may be submitted in an electronic format to the extent authorized by WCHCC. Except when procuring technology contracts, electronic submission cannot be the sole means of submitting responses to a Purchase Contract RFP. [GML § 103(1); State Technology Law § 305] Any method used to receive electronic proposals must comply with the State Technology Law, and must (a) document the time and date of receipt of each bid and offer received electronically; (b) authenticate the identity of the sender; (c) ensure the security of the information transmitted; and (d) ensure the confidentiality of the bid or offer until the time and date established for the opening of bids or offers. The timely submission of an electronic bid or offer in compliance with instructions provided for such submission in the advertisement for bids or offers and/or the specifications shall be the responsibility solely of each proposer. WCHCC shall not incur any liability from delays of or interruptions in the receiving device designated for the submission and receipt of electronic proposals. [GML § 103(1)]
- c. **Evaluation Criteria**
- i. **Best Value.** Purchase contract RFPs must be awarded based on “Best Value” as defined by state law. “Best Value” means the basis for awarding contracts for services to the proposer which optimizes quality, cost and efficiency, among responsive and responsible proposers. Such basis shall reflect, whenever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for proposers that are small businesses, certified minority- or women-owned business enterprises, or service-disabled veteran-owned business enterprises to be used in evaluation of offers for awarding contracts. [State Finance Law § 163]
 - ii. **Responsibility.** The determination of whether the proposer is deemed “responsible” may be based on factors including, but not limited to, the

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proposer's record of compliance with existing labor standards and recognizing state and federally approved apprentice training programs, and the willingness of the proposer to provide for meaningful participation of M/WBEs.

- c. **Evaluation Committee.** Proposals for a Purchase Contract (as defined in subparagraph 1 above) reasonably expected to total \$250,000 or more must be evaluated by a committee comprised of three (3) or more representatives of WCHCC.
 - i. **Objective.** The objective of the evaluation committee is to review and evaluate proposals received in response to a specific RFP for the purpose of identifying the most competitive proposal submitted by a responsive and responsible proposer. The committee shall evaluate the proposals in accordance with factors set forth in the RFP and outlined above.
 - ii. **Committee Members.** At least one of member of the evaluation committee shall be a Senior Vice President or higher ranking employee of the Corporation. Committee members should have professional expertise in, or be knowledgeable of, the technical and cost criteria related to the procurement.
 - iii. **Conflicts of Interest.** Each committee member must certify on a form approved by the WCHCC Compliance Department that he or she does not have a financial or other interest in any vendor participating in the RFP.
- d. **Notice Requirement.** Prior to the issuance of an RFP, WCHCC must publish a notice of issuance in at least one newspaper of general circulation. The RFP also should be published on WCHCC's website and a notice/copy of that publication should be forwarded to the Westchester County's Minority & Women-Owned Business Program, which will, as appropriate, initiate outreach to minority and women's business enterprises. In addition, the RFP may be distributed to qualified vendors known to WCHCC. The RFP must also satisfy the additional publication requirements set forth in Article X of this Policy.
- e. **Restricted Contacts.** Professional Service contracts subject to the RFP process must comply with the restrictions on communications between WCHCC and prospective proposers set forth in Article VIII of this Policy.
- f. **Opening of Proposals.** Proposals are not required to be opened in public, but shall be date and time stamped and opened in the presence of two or more WCHCC employees.
- g. **Selecting Other Than The Lowest Priced Proposer.** If the decision is made to award the contract to other than the lowest cost proposer, a written justification for doing so must be prepared and placed in the procurement file for this contract. The justification may include, among other things:

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- i. The winning proposer had unique experience or expertise.
 - ii. The technical quality of the winning proposer was superior to all other proposals and technical quality is a high priority for the procurement. Other special circumstances justified awarding the contract to the recommended proposer, such as the ability of the proposer to meet the time and deliverability requirements of the WCHCC department requiring the professional service.
2. **RFP Process for Medical Projects** As described above, Medical Project procurements include contracts to acquire medical equipment or devices reasonably expected to total \$20,001 or more or contracts for services necessary to install, erect, or assemble structures or facilities necessary to house or render operational such medical equipment or devices reasonably expected to total \$35,001 or more. “Medical devices or equipment” means substantial, durable apparatus, equipment, devices or systems used to: (i) care for, treat, or diagnose diseases or injuries; or (ii) relieve the pain and suffering of the sick. [PAL § 3303(9)]
 - a. **Permissible Proposers/Project Developers.** Any private corporation, partnership, limited liability company, or individual or combination thereof may submit a proposal in response to a Medical Project RFP. [PAL § 3303 (10)(g)(i)]
 - b. **Notice Requirement.** Prior to the issuance of an RFP, WCHCC must publish a notice of issuance in at least one newspaper of general circulation. Concurrent with the publication of such notice, a draft of the RFP must be filed with the County Commissioner of Health. [PAL § 3303 (9)(b)] The RFP also should be published on WCHCC’s website and a notice/copy of that publication should be forwarded to the Westchester County’s Minority & Women-Owned Business Program, which will, as appropriate, initiate outreach to minority and women’s business enterprises. In addition, the RFP may be distributed to qualified vendors known to WCHCC. The RFP must also satisfy the publication requirements set forth in Article X of this Policy.
 - c. **Restricted Communications.** Medical Project contracts subject to the RFP process must also comply with the restrictions on communications between WCHCC and prospective proposers set forth in Article VIII of this Policy.
 - d. **Information Required in the Medical Project Proposal.** Proposals for Medical Project contracts must include information that is sufficiently detailed to permit a fair and equitable evaluation of the proposal by WCHCC. Thus, the proposal must clearly identify and specify all costs that will become charges to WCHCC during the lifetime of the proposed contract, including but not limited to, the cost of planning, design, construction, operations, management and/or maintenance of any facility or device; and revenue which would accrue to WCHCC from the operation of the facility or device. Proposals must include information concerning:
 - i. The experience, expertise and qualifications of the proposer;

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- ii. The ability of the proposer to secure adequate financing;
 - iii. Project staffing;
 - iv. Implementation of work tasks and the carrying out of all responsibilities related to performance of the contract;
 - v. Any other matter that WCHCC determines to have a material bearing on its ability to evaluate the proposal. [PAL § 3303 (9)(a)]; and
 - vi. The participation of NYS Business Enterprises in accordance with Article XI of this Policy.
- e. **Evaluation of Medical Project Proposals.** Proposals must be evaluated in a manner consistent with the provisions set forth in the RFP. The evaluation must consider net capital cost or net revenue, as applicable, and whether the proposer is responsible.
- i. **Responsibility.** The determination of whether the proposer is deemed “responsible” may be based on factors including, but not limited to, the proposer’s record of compliance with existing labor standards and recognizing state and federally approved apprentice training programs, and the willingness of the proposer to provide for meaningful participation of M/WBEs.
 - ii. **Additional Factors.** The evaluation may also take into consideration factors including, but not limited to, the technical evaluation of the Medical Project, including facility design, system reliability, energy balance, annual operating cost, and efficiency. [PAL § 3303 (9)(c)]
 - iii. **Evaluation Committee.** Proposals for Medical Project contracts reasonably expected to total \$500,000 or more must be evaluated by a committee comprised of three (3) or more representatives of WCHCC.
 1. **Objective.** The objective of the evaluation committee is to review and evaluate proposals received in response to a specific RFP for the purpose of identifying the most competitive proposal submitted by a responsive and responsible proposer. The committee shall evaluate the proposals in accordance with factors set forth in the RFP and outlined above.
 2. **Committee Members.** At least one of member of the evaluation committee shall be a Senior Vice President or higher ranking employee of the Corporation. Committee members should have professional expertise in, or be knowledgeable of, the technical and cost criteria related to the procurement.
 3. **Conflicts of Interest.** Each committee member must certify on a form approved by the WCHCC Compliance Department that he or she does

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not have a financial or other interest in any vendor participating in the RFP.

- f. **Medical Project Contract Award.** WCHCC may award a contract for a Medical Project to a responsible proposer who has submitted the proposal that is most responsive to the RFP.
- i. **Negotiations.** The Corporation may negotiate with any proposer.
 - ii. **Board Approval of Awards To Proposer Other Than Lowest Priced Proposer.** As stated in Article IV, Section 7 above, in order to award a contract for a Medical Project that is reasonably expected to total \$500,000 or more to a proposer who does not offer either the lowest net cost or the greatest net revenue, the Corporation's Board of Directors must adopt a resolution that includes particularized findings as to how such proposal meets the RFP requirements and is in the public interest. [PAL § 3303(9)(d)]
 - iii. **Prevailing Wage.** Any contract awarded for a Medical Project involving construction (regardless of whether the total cost of construction exceeds \$1.5 million) must provide for the payment of prevailing wages and supplements, including but not limited to, health, welfare, and pension benefits to each laborer, worker, or mechanic employed by the successful proposer in accordance with the provisions of Labor Law § 220. [PAL § 3303(9)(d)]
 - iv. **Special Requirements for Medical Projects Involving Construction Costing \$1.5 Million or More.** Every contract entered into by the Corporation and a proposer (the "Project Developer") that involves the construction of a medical building that costs \$1.5 million or more must require the Project Developer or its construction subcontractor to: (a) procure the construction work through sealed bids and (b) comply with the Wick's Law. [PAL § 3303(10)]
 1. Duties of the Project Developer. The Project Developer must:
 - a. Furnish a payment bond guaranteeing prompt payment of persons furnishing labor and materials for such construction. (This requirement may fulfilled by the Project Developer's construction subcontractor.)
 - b. Advertise for bids for the construction contracts in a daily newspaper having general circulation in Westchester County. The advertisement must state the time and place where all bids received

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will be publicly opened and read.¹¹ At least 5 days must elapse between the publication of the advertisement and the date bids are opened.

- c. Prepare separate specifications for plumbing, heating and electric work or accept sealed lists of subcontractors in accordance with the terms of the Wick's Law.
- d. Award one or more separate contracts for each subdivision of work to the lowest responsible and responsive bidder.
- e. Be responsible for the supervision, coordination, and termination of such construction contracts.

2. Liability for Construction Contracts. Contracts awarded by the Project Developer shall be contracts of the Project Developer and not the Corporation. The Corporation shall have no obligation or liabilities, whatsoever, with respect to the construction contracts procured by the Project Developer.

3. RFP Process for Professional Service Contracts For \$500,001 or More Contracts for professional services reasonably expected to cost \$500,001 or more shall be procured through the RFP process set forth in this Policy, subject to the professional health care services exception noted above.¹²

- a. **Information Required in the Professional Service RFP.** The RFP shall include the following information:
 - i. **Purpose/General Information.** A general description of the services WCHCC seeks, the name of the Designated Contact for the procurement at WCHCC for information or questions related to the procurement, the number of copies of the proposal required for submission, a timetable of dates relevant to the proposal submission, including the proposal deadline, and a notice that the contract award is subject to the applicable provisions of federal, state, and local laws, regulations, and executive orders.
 - ii. **Specifications.** Specifications may include a detailed statement of the scope of the services to be performed, a description of the materials, equipment and methods that are to be used to deliver the services, the timetable of dates for tasks to be completed, the goals sought to be accomplished, performance standards to be met and tests to be applied to determine if the standards are

¹¹ Bids received by the Project Developer must be publicly opened and read by the Corporation. [PAL § 3303(10)(a)]

¹² The CEO of WCHCC shall have the discretion to use the RFP process set forth in this Section 2(b) to procure professional services reasonably expected to cost \$500,000 or less if deemed appropriate in a given situation.

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met, required qualifications of proposers, number and type of required references, and financial and other necessary information.

- iii. **Participation of NYS Business Enterprises.** The RFP must include information regarding requirements to ensure participation of NYS Business Enterprises in accordance with Article XI of this Policy.
- b. **Evaluation Criteria.** Factors that may be considered include price, the responsibility of the proposer, technical excellence, management capability, personnel qualifications, prior experience, past performance, and ability to comply with WCHCC's timetable for accomplishing the contract.
 - i. **Evaluation Committee.** Proposals for professional services contracts reasonably expected to total \$500,000 or more must be evaluated by a committee comprised of three (3) or more representatives of WCHCC.
 1. **Objective.** The objective of the evaluation committee is to review and evaluate proposals received in response to a specific RFP for the purpose of identifying the most competitive proposal submitted by a responsive and responsible proposer. The committee shall evaluate the proposals in accordance with factors set forth in the RFP and outlined above.
 2. **Committee Members.** At least one of member of the evaluation committee shall be a Senior Vice President or higher ranking employee of the Corporation. Committee members should have professional expertise in, or be knowledgeable of, the technical and cost criteria related to the procurement.
 3. **Conflicts of Interest.** Each committee member must certify on a form approved by the WCHCC Compliance Department that he or she does not have a financial or other interest in any vendor participating in the RFP.
- c. **Notice Requirement.** Prior to the issuance of an RFP, WCHCC must publish a notice of issuance in at least one newspaper of general circulation. The RFP also should be published on WCHCC's website and a notice/copy of that publication should be forwarded to the Westchester County's Minority & Women-Owned Business Program, which will, as appropriate, initiate outreach to minority and women's business enterprises. In addition, the RFP may be distributed to qualified vendors known to WCHCC. The RFP must also satisfy the additional publication requirements set forth in Article X of this Policy.
- d. **Restricted Contacts.** Professional Service contracts subject to the RFP process must comply with the restrictions on communications between WCHCC and prospective proposers set forth in Article VIII of this Policy.

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- e. **Opening of Proposals.** Proposals are not required to be opened in public, but shall be date and time stamped and opened in the presence of two or more WCHCC employees.
- f. **Selecting Other Than The Lowest Priced Proposer.** If the decision is made to award the contract to other than the lowest cost proposer, a written justification for doing so must be prepared and placed in the procurement file for this contract. The justification may include, among other things:
 - i. The winning proposer had unique experience or expertise.
 - ii. The technical quality of the winning proposer was superior to all other proposals and technical quality is a high priority for the procurement. Other special circumstances justified awarding the contract to the recommended proposer, such as the ability of the proposer to meet the time and deliverability requirements of the WCHCC department requiring the professional service.

VIII. RULES GOVERNING COMMUNICATION WITH PROSPECTIVE BIDDERS AND PROPOSERS FOR CONTRACTS FOR \$15,001 OR MORE

State Finance Law Sections 139-j and 139-k (“collectively, the Procurement Requirements”) restrict communications, during the procurement process, between WCHCC and Respondents¹³ to Invitations for Bids (IFBs) and Requests for Proposals (RFPs) related to contracts with an estimated annual value that totals \$15,001 or more. Further, the Procurement Requirements establish sanctions for knowing and willful violations of these restrictions, including the disqualification of a vendor or contractor from the award of any contract pursuant to a Competitive Contracting process.

- A. **Restricted Communications.** In accordance with the Procurement Requirements:
 - 1. All communications from the time of issuance of the IFB or RFP through the final award and approval of any resulting contract (“Restricted Period”), between a Respondent and the Corporation may be conducted only with WCHCC representatives designated by the Corporation (“Designated Contacts”) and listed in the IFB or RFP.
 - 2. All Respondents must disclose, on a form developed by WCHCC, any finding of non-responsibility made by a governmental entity within the previous four (4) years based on either impermissible contacts under § 139-j of the State Finance Law or the intentional provision of false or incomplete information to a governmental entity in connection with a government procurement.

¹³ For the purposes of this section “Respondent” means any individual or entity, or employee, agent, or consultant or person acting on behalf of such individual or entity, that contacts the Corporation about a procurement during the Restricted Period defined in paragraph A(1) below.

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3. All Respondents must complete an affirmation, on a form developed by WCHCC, attesting to the Respondent's understanding of, and agreement to comply with, the Procurement Requirements.
4. The disclosure and affirmation forms must be periodically updated during the term of any contract resulting from the IFB or RFP. Respondents must submit both of these forms, properly completed, as part of their bid, proposal, or quote.

B. Recording and Reporting Contacts. The Procurement Requirements also require WCHCC employees to:

1. Obtain and record certain information when contacted by Respondents during the Restricted Period.
2. Include information about Respondents' contacts during the Restricted Period in the procurement record. Review whether Respondents' contacts during the Restricted Period were made in accordance with the Procurement Requirements.
3. Take the findings of such review into consideration when determining the responsibility of a Respondent.
4. Disseminate all Respondents' written questions by and WCHCC's responses to such questions to all prospective Respondents.

C. Determination of Non-Responsibility. If a Respondent is found to have knowingly and willfully violated the Procurement Requirements, that Respondent and its subsidiaries, and related or successor entities, will be determined to be non-responsible and will not be awarded any contract issued pursuant to the IFB or RFP.

IX. REQUESTS FOR QUOTATIONS

A. When to Use RFQs The following contracts must be procured through the Request for Quotations process:

1. **Contracts for the Purchase of Commodities Necessary for the Completion of Construction/Public Work for an amount between \$10,001 and \$20,000.** Contracts for the purchase of commodities that are necessary for the completion of construction or "public work"¹⁴ for which the total cost of the goods is reasonably expected to be between \$10,001 and \$20,000 must be procured by RFQ.
2. **Contracts for Construction/Public Work for Amounts between \$20,001 and \$35,000.** Contracts for construction or the performance of "public work"¹⁵, for which the total cost of the construction or services is reasonably expected to be between \$20,001 and \$35,000 must be procured by RFQ.
3. **Contracts for the Purchase of Commodities (not for construction) or Service Work for an amount between \$10,001 and \$20,000** Contracts for the purchase of commodities

¹⁴ As defined in footnote 2 above.

¹⁵ As defined in footnote 2 above.

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(unrelated to the completion of Public Work¹⁶) or service work for which the total cost of goods or services is reasonably expected to be between \$10,001 and \$20,000 must be procured by RFQ.

4. Contracts for Professional Services for Amounts between \$100,001 and \$500,000.

Contracts for professional services for which the total cost of services is reasonably expected to be between \$100,001 and \$500,000 must be procured by RFQ. Professional services (sometimes referred to as personal services) are services that involve specialized skills, expertise, and the exercise of judgment and discretion. Examples of professional services are set forth in Article VII of this Policy.

a. Exception for Professional Health Care Services. The RFQ process does not apply to contracts for professional health care services as described in Article V of this Policy.

B. Requests for Quotations Process WCHCC shall exercise sound business judgment and shall endeavor, to the extent time permits, to solicit written or oral quotations from no fewer than three (3) persons or entities customarily providing the services or construction work sought and inquire as to the qualifications and experience of such persons.

1. Evaluation. WCHCC shall evaluate each vendor or contractor's qualifications and experience and determine the most advantageous offer.

2. Documentation. The RFQ process must be documented by the WCHCC employee or officer seeking such services or construction and the basis for selecting the vendor or contractor also must be well documented.

3. Selection. In the event a vendor or contractor is selected, copies of quotations from all proposed vendors or contractors, a copy of any recommendations made, and any other determination or record made in writing must be in the procurement file relating to such matter. If WCHCC determines to select a vendor who did not offer the lowest net cost or the greatest net revenue, as applicable, the WCHCC personnel involved shall provide a written explanation as to why the proposed contract award is in the best interest of the Corporation.

**X. ADVERTISEMENTS IN THE NEW YORK STATE CONTRACT REPORTER:
CONTRACTS FOR \$15,000 OR MORE**

In addition to the specific rules set forth in Articles VI and VII of this Policy regarding public notice of opportunities to submit bids and proposals for procurement contracts, unless one of the exceptions below apply, the following general requirements must be followed in all cases in which WCHCC is purchasing goods, services, or construction, of any kind, reasonably expected to cost \$15,000 or more.

¹⁶ As defined in footnote 2 above.

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A. State Contracts Reporter Notice for Contracts for \$15,000 or More. For any procurement with an actual or estimated amount of \$15,000 or more for which WCHCC issues an Invitation for Bids, Request for Proposals, or otherwise advertises publicly, sufficient information must be provided to the New York State Contracts Reporter to enable publication of a notice of procurement contract opportunities for a period of at least fifteen (15) days before the date a bid or a proposal is due. A procurement contract may not be awarded until such notice has been published.

B. Exceptions to Publication Requirement. The following contracts are exempt from the publication requirements:

1. Contracts for employment in the civil service. [EDL § 141(3)]
2. Procurement contracts offered to non-profit providers of human services pursuant to a non-competitive selection process. [EDL § 144(1)(e)]
3. Contracts that are re-bid or re-solicited for substantially the same goods or services within 45 business days after the due date of the original invitation for bids or request for proposals. [EDL § 144(1)(b)]

XI. PROMOTION OF STATE BUSINESS PARTICIPATION

The following policies are intended to promote the participation of New York State Business Enterprises and residents in procurement contracts: [PAL § 2879(3)(i)]

A. Contracts for \$5,000 or More In procurement contracts for \$5,000 or more:

1. WCHCC shall consult the specifications of NYS Business Enterprises in developing specifications for any procurement contract for the purchase of goods where possible, feasible, practicable, and consistent with open bidding. Where appropriate, WCHCC shall make use of the stock item specification forms prepared by the New York State Commissioner of General Services.
2. WCHCC shall require that its contractors certify their compliance with the Federal Equal Employment Opportunity Act of 1972, as amended.

B. Contracts for \$1 Million or More In procurement contracts for \$1 million or more:

1. WCHCC shall, and shall require its contractors to, provide notice to NYS Business Enterprises of opportunities to participate as subcontractors or suppliers. A contractor shall be required to document its efforts in this regard by showing that it has:
 - a. Solicited bids, in a timely and adequate manner, from NYS Business Enterprises and M/WBE, or
 - b. Contacted the New York State Department of Economic Development to obtain listings of NYS Business Enterprises, or
 - c. Placed notices for subcontractors and suppliers in local newspapers, journals and other trade publications distributed in New York State, or

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d. Participated in bidder outreach conferences.

If the contractor determines that NYS Business Enterprises are not available to participate in the contract, the contractor shall provide a statement supporting such determination for review by WCHCC.

2. WCHCC shall, and shall require its contractors to, provide notice to New York State residents of employment opportunities arising out of such contracts. A contractor shall be required to document its efforts in this regard by showing that it has listed any available positions through the Community Services Division of the New York State Department of Labor or provided such notice in a manner consistent with existing collective bargaining agreements.
3. WCHCC shall notify the Commissioner of Economic Development of the award of any procurement contract in an amount equal to or greater than \$ 1 million to a foreign business enterprise¹⁷ and comply with all other requirements set forth in Public Authorities Law § 2879(5). Except for contracts awarded on an emergency basis or unless the notice requirement is waived by the Commissioner, WCHCC may not enter a contract with a foreign business until at least fifteen (15) days after giving notice of such contract award to the Commissioner.

XII. REPORTING REQUIREMENTS

A. Publicly Available Report on Procurement Contracts For \$5,000 or More. On an annual basis, WCHCC shall prepare and make public on its internet website a report summarizing procurement activity for the period covered by the report. [PAL § 2879(6)] The report shall include the following information:

1. All contracts for the acquisition of goods or services in the amount of \$5,000 or more entered into by the Corporation.
2. All contracts entered into by the Corporation with NYS business enterprises and a description of the subject matter, value, and selection criteria used in the procurement of such contracts.

¹⁷ “Foreign Business Enterprise” means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods which are sought by the Corporation and which are substantially produced outside New York state, or services, other than construction services, sought by the Corporation which are substantially performed outside New York state. For purposes of construction services, foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.

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3. All contracts that were exempt from the publication requirements described in Article X above and set forth in Article 4-C of the Economic Development Law and the basis for such exemption.
4. A summary of the status of existing procurement contracts.

B. Report on Procurement Policy. WCHCC shall annually prepare a report that includes the Corporation's procurement policy and an explanation of any changes or amendments to such policy since the last annual report. This annual report shall be submitted to the New York State Division of the Budget, with copies to the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee and the Assembly Ways and Means Committee. [PAL § 2879(7)]

C. Reports on Goods and Services Bought Without Competitive Bidding. WCHCC shall submit to the State Authority Budget Office and make public on its internet website a report of the total amount of assets and/or services bought without competitive bidding. [PAL § 2800(1)] The report shall include the following information:

1. The nature of the assets and services.
2. The names of the vendors or contractors who were counterparties to the contract.
3. If the contract price for the assets purchased exceeds fair market value, a detailed explanation of the justification for making the purchase without competitive bidding and a certification by the CEO and CFO of the Corporation that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines.

Any questions regarding this Policy should be directed to the Office of Legal Affairs.

DEFINITIONS

“Competitive Contracting” means the procurement of commodities, construction, non-professional services, and professional services on a competitive basis. Competitive Contracting processes used by WCHCC include competitive bidding, requests for proposals, and requests for quotations.

“Foreign Business Enterprise” means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods which are sought by the WCHCC and which are substantially produced outside New York state, or services, other than construction services, sought by the WCHCC which are substantially performed outside New York state. For purposes of construction services, foreign business enterprise shall mean a business enterprise,

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including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.

“**Invitation for Bids**” (IFB) refers to the procurement method by which contracts are awarded to the lowest responsive and responsible bidder meeting the specifications of an invitation for sealed bids and furnishing the required bond or security.

“**Medical Project**” refers to contracts for: (i) the acquisition of substantial, durable, medical apparatus, equipment, devices, or systems reasonably expected to total \$20,001 or more; or (ii) the procurement of services necessary to install, erect, or assemble structures or facilities to house or render operational such medical equipment or devices reasonably expected to total \$35,001 or more. Medical Projects do not include contracts for ordinary supplies and equipment expended or used in the customary care and treatment of patients.

“**Minority or Women Owned Business Enterprises**” (M/WBE) are sole proprietorships and business firms that are majority owned or controlled by members of a statutorily recognized minority group or women.

“**New York State Business Enterprise**” means a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods which are sought by WCHCC and which are substantially manufactured, produced or assembled in New York State, or services which are sought by WCHCC and which are substantially performed within New York State.

“**Professional Services**” means services that involve specialized skills, expertise, and the exercise of judgment and discretion.

“**Request for Proposals**” (RFP) refers to the procurement method by which contracts for complex procurements often requiring specialized skills or expertise are awarded, after the evaluation of proposals, to the proposer meeting the specifications who offers the “best value.”

“**Request for Quotations**” (RFQ) refers to the procurement method by which contracts for products or services are awarded to the supplier or service provider who can best meet detailed specifications.

Archival history:

| | |
|-----------|------------------------|
| Reviewed: | 8/2010, 3/2014, 2/2017 |
| Revised: | 6/2019 |

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WESTCHESTER COUNTY HEALTH CARE CORPORATION

SINGLE/SOLE SOURCE JUSTIFICATION FORM

The purpose of this single/sole source justification is to show that a competitive procurement is impractical because only one vendor can supply the product, equipment, or services required to meet a specific project need. This form is to be completed and attached to all sole source contract requests (F-137 or PMC forms) and capital purchase requisitions for goods totaling \$20,001 or more or services totaling \$35,001 or more.

STATEMENT OF NEED

I am aware that New York State procurement laws require Westchester County Health Care Corporation to procure contracts competitively whenever practicable. This request for a single or sole source procurement is based upon my objective review and evaluation of the product, equipment, or services described below. I certify that the statements set forth in this single/sole source justification are accurate and complete to the best of my knowledge and belief.

REQUESTOR INFORMATION

| | |
|-----------------------------------|--|
| Date Requested: | |
| Name: | |
| Phone: | |
| Department: | |
| Requisition #: (If applicable) | |

VENDOR INFORMATION

| | |
|---|----------|
| Vendor Name: | |
| Contact Person: | |
| Phone: | |
| General Description of Product, Equipment, or Service to be Procured: | |
| Estimated Cost of Procurement: | \$ _____ |

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CHECK THE BOX FOR THE APPROPRIATE SINGLE/SOLE JUSTIFICATION AND ATTACH ADDITIONAL DOCUMENTATION AS REQUIRED

1. ONE OF A KIND

There is no competitive alternative for the product, equipment, or service available on the market.

The vendor is the sole provider of a licensed or patented product, equipment, or service.

Explain the specific project need for the equipment, product, or service:

Attach a letter on company letterhead and signed by an authorized representative of the vendor/contractor verifying that the product, equipment, or service can be acquired only from a single source.

2. COMPATIBILITY

The product or equipment is a replacement part for a specific make or brand of existing equipment.

The product or equipment is to be integrated with a currently owned system of the same manufacturer and it is necessary to maintain integrity of the overall system.

The contract is for the upgrade of existing computer software.

The product, equipment, or services are for an ongoing project and changing manufacturers and/or service providers during the project will increase project costs or adversely impact project feasibility or operations.

The product, equipment, or service is one for which the WCHCC Board of Directors has elected to standardize a particular make or brand name.

Please state the manufacturer/supplier and the model number or description of the existing product/equipment/system/ software:

Estimated dollar value of the existing product/equipment/system/software: \$ _____

Explain the specific project need for the equipment, product, or service and the choice of supplier:

3. SERVICES PROVIDED WITH EQUIPMENT

The product or equipment purchased must be acquired from the requested vendor because: (i) professional, maintenance, or support services must be purchased with the product or equipment; or (ii) the vendor is the only known supplier of such services in the region.

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| | |
|---|--|
| <input type="checkbox"/> | The vendor is the sole provider of manufacturer authorized warranty or maintenance services. |
| Attach documentation supporting the fact that the vendor is the sole provider of services for the product or equipment. | |
| 4. REQUIREMENTS OF INTENDED USE | |
| <input type="checkbox"/> | The proposed product or equipment is the only good that will meet the requirements of the project or the intended use although other similar products exist. |
| Explain the specific project need for the product or equipment: | |
| List the major features, functions, or capabilities of the product or equipment that are required for the given project or intended use: | |
| Explain why these features, functions, or capabilities are essential for the given project or intended use: | |
| State the reasons why the selected equipment or product is superior to all others. Give specific characteristics, capabilities, and properties: | |
| List the names of the other products, equipment, or manufacturers evaluated and attach all vendor quotations to this form: | |
| Identify the technical deficiencies with the products, equipment, or manufacturers listed above that led to their disqualification: | |
| Attach documentation supporting the specialized functionality of the selected product or equipment. | |

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CONFLICT OF INTEREST STATEMENT

I certify that I have no financial interest in, or financial relationship with, the proposed vendor for this single/sole source procurement. I further certify that no person or other entity has offered or solicited any gift, cash, equity interest, merchandise, equipment, services, or other consideration in exchange for the awarding or making of this procurement.

REQUESTOR

Signature:

Date:

ADMINISTRATIVE APPROVAL

(Approval must be provided by a Senior Vice President or higher ranking employee of WCHCC)

Name:

Title:

Signature:

Date: