

BUFFALO URBAN DEVELOPMENT CORPORATION

AMENDED AND RESTATED PROCUREMENT POLICY

A. Scope and Purpose.

Pursuant to Section 2824 of the Public Authorities Law, the Buffalo Urban Development Corporation (“BUDC”) is required to establish and adopt a procurement policy. This Amended and Restated Procurement Policy (“Policy”) shall also be applicable to all procurements undertaken by any existing subsidiary or affiliated organizations of BUDC and such other subsidiaries and affiliates as may hereafter be established by BUDC.

B. Procurement Procedures.

1. Solicitation Procedures for the Purchase of Goods and Services.
 - a. Up to \$10,000 per instance – Documented verbal quotes or written/fax/email quotes from at least two vendors.
 - b. Greater than \$10,000 to \$25,000 per instance – Written/fax/email quotes from at least three vendors.
 - c. Greater than \$25,000 to \$100,000 per instance – Formal written Request for Proposal (RFP) submitted to at least three vendors and posted at the BUDC website.
 - d. Greater than \$100,000 per instance – Formal written Request for Proposal (RFP) submitted to at least three vendors, posted at the BUDC website and publicly noticed in the NYS Contract Reporter.
 - e. Notwithstanding the foregoing, if it is reasonably anticipated that cumulative procurements pursuant to subsections (a) or (b) above will cost between \$25,000 and \$100,000 per calendar year for a single vendor or service, BUDC shall comply with the provisions of subsection (c) above; or if such cumulative procurements are reasonably anticipated to cost over \$100,000 per calendar year, BUDC shall comply with the provisions of subsection (d) above.
2. Exceptions. Alternative proposals or quotations shall not be required for procurements made through or with respect to:
 - a. New York State or Erie County contracts.
 - b. State Finance Law Section 175-b (from agencies for the blind or severely handicapped).

- c. Correction Law Section 186 (articles manufactured in correctional institutions).
- d. Emergency Procurements – an emergency exists if the delay caused by soliciting quotes would endanger public health, welfare or property. Approval of the President after consultation with the officers of BUDC is necessary, which shall be documented in the procurement file and shall include a description of the facts giving rise to the emergency and the basis for selecting the particular vendor.
- e. Time Sensitive Economic Development Opportunity – An opportunity is time-sensitive when a vendor must be retained quickly to avoid a delay that would adversely impact an economic development project or initiative of BUDC. Such time-sensitive situations include, but are not limited to: the possible loss of grant funding; the termination, default or withdrawal of an existing vendor; the need to respond to a court order or regulatory directive; or some other compelling need for goods or services. Approval of the President after consultation with the officers of BUDC is necessary, which shall be documented in the procurement file and shall also include a description of the facts relating to the time-sensitive opportunity and the basis for selecting the particular vendor.
- f. Sole Source Procurements – A “sole source” means a situation where (i) there is only one possible source in the marketplace for the goods or services, (ii) no other goods and/or services provide substantially equivalent or similar benefits, and (iii) considering the benefits, the cost to BUDC is reasonable and in the best interests of BUDC. Approval of the President after consultation with the officers of BUDC is necessary, which shall be documented in the procurement file along with an explanation of the basis for the procurement qualifying as a sole source procurement.
- g. Single Source Procurements – A “single source” means a situation where, even though two or more vendors are available to supply the required goods or services, BUDC determines that: (i) one particular vendor has unique knowledge or expertise with respect to the required goods, services or project, rendering the use of competitive procedures impractical; and (ii) considering the benefits, the cost to BUDC is reasonable. Approval of the President after consultation with the officers of BUDC is necessary, which shall be documented in the procurement file along with an explanation of the basis for concluding that a single

source procurement was in the best interests of BUDC and the manner in which BUDC identified the selected vendor.

- h. Utilities and Affiliate Transactions – The purchase of utilities and inter-affiliate or subsidiary transactions are excepted from alternative proposal/quotation requirements.
- i. Unavailability of the minimum number of vendors required under Section B, as applicable, that are able or willing to respond to a solicitation.
- j. Resolution Waiving Solicitation Requirements – The BUDC Board of Directors may adopt a resolution prospectively waiving solicitation requirements upon the Board's determination that solicitation would be impractical and such waiver is in the best interests of BUDC.

3. Basis for the Award of Contracts.

It is the general policy of BUDC to award contracts to the lowest responsible dollar offeror who meets the specifications therefor. BUDC may award contracts to other than the lowest responsible dollar offeror under circumstances that BUDC determines justify an award to other than the lowest responsible dollar offeror. In making any such determination, BUDC shall consider relevant factors including, without limitation:

- a. The vendor is an MBE or WBE firm, or relative to other vendors for the specific procurement has demonstrated the ability to meet or exceed applicable M/WBE and/or minority or workforce participation requirements;
- b. Delivery, quality and quantity requirements;
- c. Past vendor performance and/or experience;
- d. Which proposal is most advantageous to BUDC, considering other factors in addition to price;

- e. Unavailability of the minimum number of vendors required under Section B, as applicable, that are able or willing to respond to a solicitation; and
- f. Any procurement excepted from the alternative proposal/quotation requirements as set forth in subsection 2 of this Section B, and the procurement of professional services in Section E of this Policy.

4. Documentation: Procurement Tracking Form.

Each procurement made under this Policy shall be documented on a separate Procurement Tracking Form, the form of which is attached hereto as Schedule A and made a part hereof. An annual procurement report shall be presented to the Audit & Finance Committee.

5. Contents of Requests for Proposals (RFP).

For all procurements under this Policy that require an RFP, the following information shall be included in the solicitation:

- a. Goods being sought or the scope of services desired;
- b. The projected term of the contract;
- c. Criteria to be used in evaluating proposals and the requirements that must be fulfilled;
- d. Schedule of relevant dates;
- e. Insurance requirements;
- f. M/WBE goals; and
- g. Designation of the BUDC representative to whom communications regarding the RFP should be directed.

6. Contents of Requests for Qualifications (RFQ).

For all procurements under this Policy that require an RFQ, the following information shall be included in the solicitation:

- a. The scope of services desired;

- b. Criteria to be used in evaluating qualifications and the requirements that must be fulfilled;
- c. Insurance requirements, if applicable;
- d. M/WBE goals; and
- e. Designation of the BUDC representative to whom communications regarding the RFQ should be directed.

C. Erie County Businesses and Minority & Women Owned Enterprises.

It is the goal of BUDC to provide opportunities for the purchase of goods and services from (i) business enterprises located in Erie County and (ii) certified minority and/or women-owned business enterprises. To that end, BUDC will utilize available lists of M/WBE businesses certified by Erie County and/or State of New York and use its best efforts to solicit proposals from such businesses by notifying them of opportunities to submit proposals for goods or services when practical. In addition, where the procurement of a specific good or service is to be accomplished using funds other than the funds of BUDC or its affiliates, BUDC shall comply with all M/WBE goals and other M/WBE requirements applicable to such funding.

D. Effect on Other Procurement Requirements.

Where the procurement of a specific good or service is to be accomplished using funds other than the funds of BUDC and such funding sources specify different or more restrictive procurement requirements than are provided for in this Policy, the procurement requirements of the funding source will supersede the requirements of this Policy.

In those instances where BUDC is a recipient of federal funds which it will use to pay for goods or services, the procurement provisions set forth in 2 C.F.R §200.318 et seq. shall apply, including procurement requirements applicable to goods or services that exceed \$150,000 in value (as such amount is adjusted in accordance with 48 C.F.R. Section 2.101). For procurements using federal funds, BUDC shall include in its contract with the vendor or contractor the applicable contract provisions set forth in Appendix II to Part 200 of Title 2 of the Code of Federal Regulations, or any successor regulation or appendix.

E. Professional Services.

Contracts for professional services involve the application of specialized expertise, the use of professional judgment, or a high degree of creativity. Professional services include services which require special education and/or training, license to practice or are creative in nature. Examples are: lawyers, doctors, accountants, and engineers. Furthermore, professional service contracts often involve a relationship of personal trust and confidence. Procurement of professional services in an amount up to \$25,000 is not subject to the solicitation procedures contained in Sections B(1)(a) and (b) of this Policy. Procurement of professional services in an amount greater than \$25,000

shall be made through a written Request for Proposal (RFP) or a Request for Qualifications (RFQ) process.

F. Procurement of Insurance.

Procurement of Insurance Brokerage services is subject to this Policy as a professional service. Notwithstanding the foregoing, actual insurance policies procured are not subject to the requirements of this Policy.

G. Procurement Lobbying.

BUDC shall follow the applicable provisions of the New York Procurement Lobbying Law (State Finance Law §§ 139-j, 139-k)) for any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of \$15,000.

H. Reporting Requirements.

Procurements are intended to be made for no greater than the fair market value of the asset procured. In the event circumstances exist in which the acquisition of an asset is made where the contract price to be paid by BUDC exceeds the fair market value of the asset, BUDC shall include in its annual report required by Section 2800(2) of the Public Authorities Law a detailed explanation of the justification for making the purchase and a certification by the President and Chief Financial Officer of BUDC that they have reviewed the terms of the acquisition and determined that it complies with applicable law and this Policy.

I. Approval Thresholds.

The following approval thresholds shall apply to the procurement of all goods and services, except those procurements made under Section B(2)(d) and (e):

1. The President and Executive Vice President of BUDC are each authorized to procure goods and services in an amount up to \$10,000. Prior to procuring such goods or services, the President or Executive Vice President shall confer with the Treasurer to confirm that the proposed expenditure is within budgetary limits. The President or Executive Vice President shall report the procurement of goods and services at the next Board of Directors meeting following the date of procurement.
2. The Audit and Finance Committee, Downtown Committee and Real Estate Committee, as applicable, are each authorized to approve the procurement of goods and services greater than \$10,000, but not in excess of \$25,000. Prior to procuring such goods or services, the President and applicable committee chair shall confer with the Treasurer to confirm that the proposed expenditure is within budgetary limits. The President or Executive Vice President shall report the procurement of goods and

services authorized by the applicable committee at the next BUDC Board of Directors meeting following the date of procurement.

3. The procurement of goods and services in an amount greater than \$25,000 shall require the approval of the BUDC Board of Directors. By resolution, the Board may delegate to BUDC executive staff or a committee of the Board the authority to procure goods or services in an amount greater than \$25,000 without Board approval.

J. Annual Review.

This Policy shall be annually reviewed and approved by BUDC's Board of Directors.

Adopted: 7/7/2009

Amended & Adopted: 6/8/2010

Re-adopted: 3/29/2011

Re-adopted: 3/27/2012

Re-adopted: 2/26/2013

Amended and Adopted: 3/31/2015

Re-adopted: 3/29/2016

Re-adopted: 3/28/2017

Amended & Adopted: 3/27/2018

Re-adopted: 3/26/2019

Re-adopted: 3/31/2020

Re-adopted: 3/30/2021

SCHEDULE A
Procurement Tracking Form

Buffalo Urban Development Corporation

95 Perry Street | Buffalo, NY 14203 | Phone: 716-856-6525 | Fax: 716-856-6754

Procurement Tracking Form

Original Solicitation Date: _____ Procurement Category: Goods/Services
 Procurement Description: _____ Professional Services

Approving Party (§ 1, 1-3): President Executive Vice President BUDC Committee Board of Directors

Vendor Selected: _____

Is Vendor an M/WBE? Yes No If Yes, Specify type: _____ Contract Price: _____

Date Awarded: _____ Source of Funds: _____

If A Procurement Exception Applies, Please Explain (§ B(2)(a-j)):
 (e.g., Emergency, Time Sensitive Opportunity, Sole Source, Single Source, etc.)

Reporting Procedure (§ 1, 1-3)

| | |
|---|--|
| Procurement Report Delivered to: | <input type="radio"/> Board of Directors <input type="radio"/> N/A |
| Date of Report (Meeting): | _____ |

| Quotations/Proposals Received: | | | |
|--------------------------------|--------|---|--------|
| # | Vendor | Type of Solicitation (§ B(1)(a-d)) | Amount |
| 1 | | <input type="radio"/> RFP/RFQ/Written Proposal <input type="radio"/> Written <input type="radio"/> Verbal | |
| 2 | | <input type="radio"/> RFP/RFQ/Written Proposal <input type="radio"/> Written <input type="radio"/> Verbal | |
| 3 | | <input type="radio"/> RFP/RFQ/Written Proposal <input type="radio"/> Written <input type="radio"/> Verbal | |
| 4 | | <input type="radio"/> RFP/RFQ/Written Proposal <input type="radio"/> Written <input type="radio"/> Verbal | |
| 5 | | <input type="radio"/> RFP/RFQ/Written Proposal <input type="radio"/> Written <input type="radio"/> Verbal | |
| 6 | | <input type="radio"/> RFP/RFQ/Written Proposal <input type="radio"/> Written <input type="radio"/> Verbal | |

Was Lowest Cost Proposal Selected? Yes No

If No, Please Explain (§ B(3)(a-h)):

BUFFALO URBAN DEVELOPMENT CORPORATION

Procurement Procedures Applicable to the Expenditure of Federal Funds

ARTICLE I **Scope**

1.1 The procurement of goods and services made by Buffalo Urban Development Corporation or any of its affiliates or subsidiaries (“BUDC”) involving the expenditure by BUDC of federal funds will be undertaken in accordance with the procurement procedures set forth herein (the “Policy”) and the applicable provisions of 2 CFR Sections 200.318 through 200.326. All other procurements (i.e., those made with non-federal funds) shall be made in accordance with the BUDC procurement policy then in effect.

ARTICLE II **Procurement Standards**

2.1 All procurements subject to this Policy are to be undertaken in a manner that provides for full and open competition consistent with the standards set forth in 2 CFR Section 200.319. Regardless of the procurement method utilized, BUDC may only award contracts to responsible contractors or vendors possessing the ability to perform successfully under the terms and conditions of the procurement. Consideration will be given to such matters as contractor/vendor integrity, compliance with public policy, record of past performance and financial and technical resources in awarding contracts.

2.2 Solicitations will contain a clear and accurate description of the technical requirements for the material, product, or service to be procured and will identify all requirements that the bidders must fulfill and all other factors that will be used by BUDC in evaluating bids or proposals. In addition, BUDC will ensure that all solicitations include enough qualified sources to ensure maximum open and free competition.

2.3 In order to ensure objective contractor/vendor performance and eliminate unfair competitive advantages, contractors/vendors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals will be excluded from competing for such procurements.

2.4 Solicitations will not contain features that unduly restrict competition. Some examples of situations considered under federal regulations to be restrictive of competition include, but are not limited to, the following:

- Placing unreasonable requirements on firms in order for them to qualify to do business with BUDC;
- Requiring unnecessary experience and excessive bonding;
- Non-competitive pricing practices between firms or between affiliated companies;
- Executing non-competitive contracts with consultants that are on retainer contracts
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered; and
- Any arbitrary action in the procurement process.

2.5 In undertaking procurements, BUDC shall avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach to procuring the specific good or service.

2.6 Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms. In accordance with 2 CFR Section 200.321, BUDC will take affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. These affirmative steps include the following:

- Placing qualified small and minority businesses and women’s business enterprises on BUDC’s solicitation lists;
- Assuring that BUDC solicits small and minority businesses and women’s business enterprises whenever they are potential sources;
- When economically feasible, dividing total project requirements into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises;
- Using the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the above affirmative steps.

ARTICLE III **Methods of Procurement**

3.1 Methods. In accordance with 2 CFR Section 200.320, BUDC shall procure good and services utilizing one of the following methods: (i) micro-purchase procedures; (ii) small purchase procedures; (iii) procurement by competitive proposals; or (iv) procurement by competitive sealed bids. In addition, BUDC may procure goods and services without competition under the circumstances set forth in Section 3.6.

3.2 Micro-purchases (2 CFR Section 200.67). Micro-purchases involve the acquisition of goods or services that in the aggregate, cost no more than the Micro-Purchase Threshold, as such threshold is set forth in 2 CFR Section 200.67 (currently \$10,000). Micro-purchases may be made without soliciting competitive quotations, provided that the BUDC President considers the price to be reasonable, and such determination is documented in the record of procurement.

3.3 Small Purchases (2 CFR Section 200.68). Small purchases involve the acquisition of goods or services that cost no more than the Simplified Acquisition Threshold, as such threshold is set forth in 2 CFR Section 200.68 (currently \$250,000). For small purchases, BUDC will obtain written price or rate quotations from an adequate number of qualified sources, which generally will involve soliciting written price or rate quotations from a minimum of two (2) vendors.

3.4 Procurement through Competitive Proposals. As provided in 2 CFR Section 200.320(d), the competitive proposals method of procurement is normally conducted with more than one source submitting an offer and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. When the competitive proposal method is used, the following requirements apply:

- Requests for proposals (RFP) must be publicized and identify all evaluation factors and their relative importance;
- Proposals must be solicited from an adequate number of qualified sources—three proposals will generally be deemed adequate;
- BUDC will utilize a documented method for conducting technical evaluations of the proposals received and for selecting recipients;
- Contracts will be awarded to the responsible firm whose proposal is most advantageous to BUDC, with price and other factors considered.

BUDC may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform such services.

3.5 Procurement by Sealed Bids. BUDC may procure goods and services through the use of a competitive sealed bid process. Where sealed bid procurement is used, bids must be publicly solicited with a firm fixed-price contract (lump sum or unit price) to be awarded to the responsible bidder whose bid is the lowest in price while conforming to all material terms and conditions of the solicitation.

3.5.1 Construction Services. As provided in 2 CFR Section 200.320, the competitive sealed bid method of procurement is the preferred method of procuring construction services, if the following conditions apply: (A) a complete, adequate, and realistic specification or purchase description is available; (B) two or more responsible bidders are willing and able to

compete effectively for the business; and (C) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

Where sealed bids are used, the following requirements apply:

- Bids must be solicited from a sufficient number of known suppliers who are given adequate response time prior to the date set for opening the bids;
- The invitations for bids must define the items or services in order for the bidder to properly respond;
- All bids should be opened at the time and place identified in the invitation for bids;
- A firm fixed price contract will be made in writing to the lowest responsive and responsible bidder; and
- Any or all bids may be rejected if there is a sound documented reason for doing so.
- Bid bonds, performance bonds and payment bonds are required as provided in 2 CFR Section 200.325.

3.6 Procurements without Competition. BUDC may procure goods or services without competition when one or more of the following circumstances apply:

- The good or service being procured is available only from a sole source;
- The public exigency or emergency nature of the procurement will not permit a delay resulting from a competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes non-competitive proposals in response to a written request from BUDC; or
- After solicitation of a number of sources, competition is determined by BUDC to be inadequate.

ARTICLE IV

Contracts; Incorporation of Federal Contract Provisions

4.1 All contracts entered into by BUDC shall contain the applicable provisions set forth in Appendix II to 2 CFR Part 200, or any successor regulation or appendix. BUDC shall undertake such cost or price analysis as may be required in accordance with 2 CFR Section 200.323. Time and materials contracts are discouraged and shall be utilized only in compliance with the provisions of 2 CFR 200.318(j)(i).

ARTICLE V

Records of Procurement Transactions

5.1 BUDC will maintain records of all procurements made pursuant to this Policy. Such records shall include, at a minimum, a written report with relevant source documents setting forth the rationale for the method of procurement selected, the type of contract, the basis

for contractor selection or rejection, and the basis for the contract price. Source documents for purposes of this Article shall include receipts, purchase orders, invoices, RFP/RFQ data and bid documents. These documents will be maintained for such period of time as the federal award or sub-grant requires, or if no such period is specified, in accordance with BUDC records retention policies.

ARTICLE VI **Conflicts of Interest**

6.1 No employee, director, officer or agent of BUDC may participate in the selection, award or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, director, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. In the event that a conflict of interest, real or apparent, exists, the employee, director officer, or agent of BUDC shall notify the appropriate official(s) of BUDC, and such conflict of interest shall be processed in accordance with the provisions of the BUDC Code of Ethics.

6.2 No employee, director, officer or agent of BUDC shall solicit or accept gratuities, favors, or anything of monetary value from current or prospective consultants, contractors, vendors in connection with any federal procurements made under this Policy. For purposes of this Section, "gratuities, favors, or anything of monetary value" shall include money, services, loans, travel, entertainment, hospitality or any financial transaction on terms not available to the general public, but shall not include normal hospitality or promotional materials if such hospitality or materials do not exceed \$100.00 in value and are not received in circumstances in which it might reasonably be inferred that they were given with intention to influence or reward an employee, director, officer or agent of BUDC in relation to the performance of their duties.

6.3 Any BUDC employee, director, officer, or agent who knowingly and deliberately violates the provisions of this Article may be subject to disciplinary action up to and including termination or employment or removal from the board or office. Any contractor or potential contractor who knowingly and deliberately violates these provisions will be barred from future transactions with BUDC.

ARTICLE VII **Contract Approval Thresholds**

7.1 The approval thresholds set forth in Section (I) of the BUDC Procurement Policy shall be applicable to the procurement of all goods and services made under this Policy, other than emergency procurements made pursuant to Section 3.6.

ARTICLE VIII
Amendments

8.1 This Policy may be amended from time to time by the BUDC Board of Directors.

Adopted: October 27, 2020

Re-adopted: March 30, 2021