



## **NIAGARA FALLS WATER BOARD PROCUREMENT POLICY AND PROCEDURES**

The Niagara Falls Water Board (“NFWB”) is a public benefit corporation that was created pursuant to Public Authorities Law § 1231-b. The statute setting forth the NFWB’s functions states that its “powers and duties are in all respects for the benefit of the people of the city and the service area and the state for the improvement of their health, welfare and prosperity and that such purposes are public purposes and that the water board is and will be performing an essential governmental function.” Pub. Auth. L. § 1230-e (6). The NFWB’s powers permit it to “enter into contracts” and to “acquire . . . property.” *Id.* at § 1230-f. “All contracts for construction or purchase of supplies, materials or equipment shall be let by the water board, shall be made in conformity with the applicable provisions of section one hundred three of the general municipal law and section one hundred thirty-five of the state finance law.” *Id.* at § 1230-u. This procurement policy is designed to set forth in simple language how the NFWB will implement these provisions of law.

NFWB’s procurement policy is intended to assure the prudent and economic use of public monies in the best interests of the people in the NFWB’s service area and of the State of New York and will facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances. It is also the intention of this policy to guard against favoritism, extravagance, fraud and corruption, and, wherever possible within existing laws, to promote and support local businesses and industry. The principal way that this procurement policy will help to accomplish these aims will be promoting the competitive securing of goods and services whenever feasible.

### **PROCEDURE FOR THE PROCUREMENT OF GOODS AND SERVICES**

The NFWB hereby formally adopts the following written procedure (“procedure”) applicable to all purchases of goods and services after November 1, 2018. This procedure is meant actively to promote competitive procurements of all goods and services, with very limited exceptions, as set forth herein. The current revision, as noted on the last page of this document, replaces and supersedes all prior procurement policies. NFWB staff is hereby directed to comply with this procedure and to retain the necessary documentation as required herein to substantiate such compliance. This procedure and the NFWB’s guidelines for acquisition and disposal of property should be included in the NFWB employee handbook and posted at NFWB.org.

## 1. REQUIREMENTS APPLICABLE TO ALL PROCUREMENTS

- 1.1. For all procurements, it is the responsibility of those involved to comply with all state and local laws and always to perform their duties in an ethical manner which will not cast suspicion on the way in which the NFWB operates its procurement system. It is imperative that all NFWB employees involved in the process of procuring goods and services be especially cautious to avoid any appearance of indiscretion or impropriety when dealing with vendors and/or prospective vendors. In addition, NFWB Board Members, officers, and employees shall conduct themselves at all times in accordance with the NFWB Conflicts of Interest Policy and the NFWB Code of Ethics Policy as amended from time to time by the Board.
- 1.2. All purchasing contracts made by the NFWB shall be evidenced digitally in its Financial Management Software (“FMS”), or in writing, on a Requisition form which provides a description of the items purchased, the terms of the sale, and the NFWB internal budget account number, and shall be maintained as part of the records of the Board.
- 1.3. Tied offers and local vendor preference. When all variables are equivalent, local vendors shall be given preference over non-local vendors. When local preference is not a viable method of resolving a tied bid or proposal, the Executive Director shall determine the bidder to be awarded, and the basis for the award determination shall be documented in the Board Resolution awarding the contract.
- 1.4. Procurements shall not be parceled, split, divided, or purchased over a period of time in order to circumvent the dollar purchasing limitations specified herein or to circumvent the employee’s authorized spending limit.
- 1.5. Non-bid products and services should be reviewed periodically for competitive pricing and at any time that prices have increased.
- 1.6. To promote competition, in addition to advertising bids, NFWB staff is encouraged to take additional reasonable steps to encourage as many bidders as possible, and may notify known vendors of bids, post bids in trade message boards, notify Union halls, and post bids on construction exchange websites.
- 1.7. All invitations to bid and requests for proposals are to be advertised in the NYS Contract Reporter.
- 1.8. All invitations to bid and requests for proposals with an anticipated value in excess of \$25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing, or in excess of \$100,000 for acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, shall be evaluated for Minority and Women Business Enterprise (“MWBE”) and Service Disabled Veteran Owned Business (“SDVOB”) participation goals as required by the Water Board’s MWBE and SDVOB policies.

1.9. All procurements in excess of \$15,000 annually are subject to State Finance Law Sections 139-j and 139-k, effective January 1, 2006 (“Lobbying Law”). Under the Lobbying Law, all “contacts” (defined as oral, written or electronic communications with the NFWB intended to influence a procurement) during a procurement - from the earliest notice of intent to solicit bids/proposals through final award and approval - must be made with one or more designated point(s) of contact only. Each invitation to bid and request for proposals must identify the point(s) of contact for Lobbying Law purposes. Additional requirements are found in the Water Board’s Lobbying Law policy. Violations of the policy regarding permissible contacts must be reported to the appropriate NFWB officer (Executive Director or General Counsel) and investigated accordingly.

## 2. CONSTRUCTION AND PUBLIC WORKS CONTRACTS – GENERAL POLICY

All contracts or orders for work, material, or supplies performed or furnished in connection with construction or other public works involving the expenditure of more than \$35,000 shall be publicly bid.

The NFWB shall include such bid specifications as are deemed desirable in the judgment of the Executive Director, including requiring appropriate bid security. The NFWB shall not award any construction contract except to the lowest bidder who, in its opinion, is qualified to perform the work required and who is responsible and reliable. The NFWB may, however, reject any or all bids or waive any informality in a bid if it believes that the public interest will be promoted thereby. The NFWB may reject any bid if, in its judgment, the business and technical organization, plant, resources, financial standing, or experience of the bidder justifies such rejection in view of the work to be performed.

All construction contracts shall be let in accordance with General Municipal Law § 103 and the provisions of state law pertaining to prevailing wages, labor standards, and working hours. Where a cost for erection, construction, or alteration of buildings shall exceed \$500,000, the contract must comply with State Finance Law § 135, which is incorporated by reference herein and includes, among other things, requirements for separate bidding on plumbing, HVAC, and electrical work. Where appropriate, construction contracts should be advertised in not only a newspaper and the NYS Contract Reporter, but also posted to online construction exchanges to encourage multiple competitive bids.

Nothing in this policy shall be construed to limit or diminish the power of the NFWB to do any construction directly by the officers, employees, or agents of the NFWB.

3. PURCHASES OF GOODS, EQUIPMENT AND SERVICES (NOT INVOLVING CONSTRUCTION OR PUBLIC WORKS) – GENERAL POLICY

Except as otherwise expressly provided herein, NFWB purchase orders involving an expenditure on a reasonably anticipated annual basis of more than \$20,000 for goods, materials, supplies, equipment, or services (such as service contracts) not necessary for the completion of a public works contract shall be made pursuant to an open competitive bidding process. For goods, materials, supplies, and equipment, purchase contracts shall be awarded to the lowest responsible bidder furnishing the security required by NFWB for the purchase after advertisement for sealed bids in the manner provided for by General Municipal Law § 103. In the case of services, the award must be based on the best value to NFWB, which if not equated to low price should be, wherever possible, based upon quantifiable criteria that result in the contract award to the offeror that optimizes quality, cost, and efficiency.

In any case where a responsible bidder's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus, or tools to be traded in by NFWB, the gross price shall be reduced by the amount of such allowance, for the purposes of determining the low bid. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, NFWB's Board may award the contract to any of such bidders. NFWB reserves its discretion to reject all bids and re-advertise for new bids in the manner provided for in this procedure.

4. PROCEDURES FOR PURCHASE ORDERS, INCLUDING BLANKET PO'S

**4.1. Purchases Less Than \$1,000**

- 4.1.1. Where possible, prior to the purchase of an item or service, the NFWB employee shall contact at least two (2) suppliers of the item or items to be procured to obtain the best price for and quality of the item or items to be purchased.
- 4.1.2. Division Heads are authorized to make and approve purchases on behalf of the NFWB in an aggregate amount up to \$1,000.
- 4.1.3. Various other subordinate employees, if designated in writing by a Director, are authorized to make and approve purchases on behalf of the NFWB in an aggregate amount up to \$500.

**4.2. Purchases Greater Than \$1,000 and Less than \$5,000**

- 4.2.1. Quotes for purchases of \$1,000 up to and including \$5,000, whether verbal or written, shall be documented in the quotes section of the procurement process and/or as part of a manual purchase requisition.
- 4.2.2. Required Final Approval: Any Director, provided that budgeted funds for the purchase first have been identified.

#### 4.3. Purchases Greater Than \$5,000 and Less than Competitive Bidding Thresholds

4.3.1. Quotes for purchases of \$5,000 up to and including the appropriate competitive bidding threshold of \$20,000 or \$35,000, whether verbal or written, shall be documented in the quotes section of the procurement process and/or as part of a manual purchase requisition form and as a separate written document, dated and signed by an authorized vendor representative. Wherever possible, a minimum of three written quotes must be obtained. All written quotes and a memorandum for verbal quotes shall be scanned and attached to the requisition and maintained by the Board's FMS.

4.3.2. Required Final Approval: Executive Director or his designee as authorized in writing may approve up to and including \$20,000. **Purchases over \$20,000 require Board of Directors approval.**

#### 4.4. Purchase Contracts Greater Than \$20,000 and Public Works Greater than \$35,000

4.4.1. Must be supported by summary of the competitive bids received or be subject to one of the exceptions listed in Section 5 below, with the Board resolution including an explanation for the exception.

4.4.2. Required Final approval: Board of Directors (Board approval is required for all purchases over \$20,000, see Sections 2 and 3 for competitive bidding thresholds).

### 5. EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

The NFWB may contract or purchase through non-competitive negotiations under the following circumstances.

#### 5.1. Emergencies

5.1.1. Notwithstanding any of the other provisions in this procedure, in the case of public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting NFWB buildings, property, pipelines, or the life, health, safety or property of NFWB employees, customers or the general public require immediate action which cannot await a competitive process or competitive bidding, contracts for public work or the purchase of supplies, materials or equipment or services (including necessary replacement parts that could not reasonably be stockpiled) may be let by NFWB's Executive Director or his designee by immediate contract and the Executive Director may temporarily dispense with the competitive bidding or procurement requirements set forth herein. However, a good faith emergency must exist and while the emergency procurements do not require competitive bidding, it is nevertheless the policy and procedure of NFWB that such procurements must, wherever possible, be made at the lowest possible cost to NFWB.

- 5.1.2. Declarations of Emergency shall be documented in writing. The Executive Director will email to all members of the NFWB Board prior to or as soon as possible after making a procurement pursuant to this section a short statement to advise them of the emergency, the reason why the situation constitutes an emergency, a description of the emergency procurement, and the estimated cost of the emergency procurement. Emergency procurements shall be ratified by the NFWB Board at their next regularly scheduled meeting or may be ratified at a special meeting called pursuant to NFWB by-laws.

## **5.2. New York State Contracts and Niagara County Contracts**

- 5.2.1. The NFWB may, without soliciting competitive bids, purchase materials, equipment and supplies through New York State (“NYS”) and Niagara County contracts at the same prices and under the same terms and conditions as the State or County. However, no purchase may be made through a NYS or County contract after competitive bids have been received unless the purchase may be made upon the same conditions and specifications as the bid but at a lower price.
- 5.2.2. All purchases through a NYS or County contract must be made only from the vendor awarded the contract. No purchases may be made from other vendors without soliciting competitive bids.
- 5.2.3. When it is determined that a purchase is to be made through NYS or Niagara County contract, an approved requisition and/or purchase order referencing a valid NYS contract number must be prepared.
- 5.2.4. A list of commodities available through NYS contracts can be reviewed at the following website: <http://www.ogs.state.ny.us>

## **5.3. “Piggybacking” on Contracts of the United States or any State, Agency, or other Political Subdivision or District Thereof**

- 5.3.1. The NFWB may, pursuant to General Municipal Law § 103(16), “piggyback” on contracts awarded by government entities that have been made available for use by other government entities, provided that those contracts were let in a manner that constitutes competitive bidding consistent with New York state law, including municipal cooperative purchasing. When “piggybacking,” the NFWB is not required independently to seek competitive bids, as this already has been done by the other government entity.
- 5.3.2. The contract to be “piggybacked” must have been let by a government entity, not a private party or not-for-profit corporation. Contracts let through Sourcewell, Omnia Partners Public Sector, NASPO ValuePoint, National Cooperative Purchasing Alliance (“NCPA”), and similar public cooperative contract purchasing agencies may be appropriate for piggybacking.
- 5.3.3. The contract explicitly must have been made available for use by other governmental entities; unilateral offers by vendors to extend contract pricing and terms and conditions offered to other government entities are not acceptable.

- 5.3.4. The contract must have been let to the lowest responsible bidder or on the basis of best value.
- 5.3.5. To “piggyback” on a contract generally will require NFWB staff to obtain and review a copy of the underlying contract/bid specification. This and any similar documentation should be scanned and maintained as part of the requisition/purchase order for the procurement.

#### **5.4. Repair and Maintenance Provided by Original Manufacturer**

Repair and maintenance services provided by the original equipment manufacturer, supplier or installer (or their authorized agent or representative) are exempt from the quoting aspect of this policy when their services are required due to a specific or proprietary type of equipment.

#### **5.5. Sole Source**

- 5.5.1. It is the policy of the NFWB to promote competition in the procurement process, whenever possible. Toward that end, the NFWB will not specify the product of a certain manufacturer to the exclusion of all other comparable products, except where such a designation is required for the public interest, such as where local geographic (e.g. there is only a single source within a reasonable geographical area of the goods or services to be procured), security, public health or other conditions require the use of and only the type of equipment specified.
- 5.5.2. Where NFWB specifies a particular article or type of equipment which it regards as its general standard, it will provide that any other manufacturer of a similar equipment may meet the specifications if his or her product is reasonably equivalent to that mentioned as the standard.
- 5.5.3. Only in those instances where NFWB is required to secure equipment or service from a sole source of reasons of local geographic, security, public health or other conditions, may a purchase of such items or service be made without a competitive procurement process. In such instance, where the procurement exceeds \$20,000 the Board shall by resolution declare the need to purchase the equipment or service from a sole source vendor prior to purchase.

#### **5.6. Standardization**

- 5.6.1. Standardization should be utilized only where there are strong reasons of efficiency or economy. It is NFWB’s policy and procedure that it will not specify the product of a certain manufacturer to the exclusion of all other comparable products, except where such a designation is required for the public interest.
- 5.6.2. Although NFWB may specify a particular article or type of equipment which it regards as its general standard, it should provide that any other manufacturer of a similar object may meet the specifications if his or her product is reasonably equivalent to that mentioned as the standard.

- 5.6.3. In those instances where the public interest requires that NFWB standardize, such standardization may only occur upon the adoption of a Resolution by the members of the Board stating that, for reasons of efficiency or economy explained in the resolution, there is a need for standardization.
- 5.6.4. Even where NFWB standardizes on a particular article or type of equipment, competitive bids or quotes from all suppliers of that article or type in Western New York or, if necessary, outside the area should be actively solicited to promote competition. In such case, the Executive Director, or designee, shall contract with the lowest responsible bidder, or the party providing the lowest quote, furnishing the required security after any public advertisement as may be required.

### **5.7. Surplus and Second-Hand Supplies**

Surplus and second-hand supplies, material, or equipment may be purchased by NFWB without competitive bidding from the Federal Government, the State of New York or from any other political subdivision, district, or public benefit corporation.

### **5.8. Professional Services**

- 5.8.1. Professional services are those services requiring special or technical skill, training, or expertise. These types of services are routinely provided by attorneys, accountants, engineers, and architects, etc. Bidding is not required when a service is so specialized that it would not be in the NFWB's best interest to do so. The decision not to rely on competitive bidding procedures is based on the nature of the service, qualifications, prior experience, or an existing relationship with the NFWB.
- 5.8.2. An effective way to award contracts for professional services is to solicit requests for proposals ("RFP"). This ensures that qualified firms are given the opportunity to submit proposals and can result in reduced costs as a result of competition. However, contracts are awarded based on the criteria listed above and not on price alone.
- 5.8.3. Except as provided below, a formal RFP or where more appropriate a request for qualifications ("RFQ") shall be required prior to the award of any agreement for professional services requiring the expenditure of Water Board funds over \$20,000. Where feasible, three written quotes should be obtained for procurements between \$5,000 and \$20,000. Water Board approval is required for procurements of professional services in excess of \$20,000.
- 5.8.4. Where Water Board approval of a professional services agreement over \$20,000 is requested without a prior RFP or RFQ, the proposed resolution for the award shall state (1) the reasons why a formal RFP or RFQ was not issued; (2) which firms informally were solicited for proposals; and (3) why the procurement should not be postponed to permit compliance with Section 5.8.3.



- 5.8.5. All procurements of architectural and engineering services for federally funded projects (including projects receiving Clean Water State Revolving Fund [CWSRF], Drinking Water State Revolving Fund [DWSRF], or Infrastructure Investment and Jobs Act of 2021 funds) after October 1, 2022 are subject to specific federal procurement requirements. Such procurements must follow applicable Environmental Facilities Corporation (“EFC”) guidance available at <https://efc.ny.gov/forms-tools>.

## 5.9. Lease Arrangements

- 5.9.1. Leases of equipment shall also be awarded after a competitive process.
- 5.9.2. NFWB staff shall obtain, whenever possible, formal written quotations or proposals from three or more vendors for any lease involving in excess of \$5,000 annually. Such written quotations or proposals shall set forth the particulars as to the equipment to be provided and details as to cost, on an annual and total lease basis, which may be used for evaluation of the proposal. The lease shall also include details as to additional cost beyond the base lease amount necessary properly to evaluate the equipment to be leased prior to award to the successful vendor.
- 5.9.3. For leases involving an annual total lease expense of less than \$5,000, NFWB staff shall secure at least three informal quotes, whenever possible, and perform the same evaluation before making a recommendation to the Executive Director relative to the selection of a lessor for the equipment to be leased.
- 5.9.4. Leases in excess of \$20,000 shall be approved by the NFWB Board.

## 6. PURCHASE CARDS/NFWB CREDIT CARDS

- 6.1. Are available to employees authorized by Board of Directors policy.
- 6.2. The Director of Financial Services or Deputy Director of Financial Services shall maintain a list of all employees with purchase cards.
- 6.3. All employees shall be required to sign a Purchase Card Policy before being issued a purchase card.
- 6.4. Purchase card transactions shall require appropriate documentation and shall be reflected by the FMS.
- 6.5. Purchase card transactions shall regularly be audited by the Director of Financial Services, Deputy Director of Financial Services, or their designee, formally or informally, and any discrepancies shall be reported to the NFWB Board if they cannot be reconciled after investigation.

## 7. PETTY CASH

7.1. Where cash can be used for small purchases or expenses less than \$50, the Petty Cash system may be utilized.

7.2. Written receipts and internal expense codes must accompany all reimbursements.

7.3. Petty Cash purchases are not intended to circumvent the purchasing system.

## 8. SUPPORT FOR MINORITY, WOMEN-OWNED, SERVICE-DISABLED VETERAN OWNED, AND SMALL BUSINESSES

NFWB supports contracts with minority, women, and service-disabled veteran owned businesses and small businesses when awarding contracts in purchasing goods, services and equipment, and by statute is subject to Articles 15-A and 17-B of the Executive Law with respect to MWBE and SDVOB requirements in procurement contracts. NFWB will not discriminate against any person who is qualified and available to perform the work by reason of race, color, creed, gender, or national origin. NFWB will encourage active participation by MWBE, SDVOB, and small businesses in its procurement process, including reviewing and referencing any available lists of such vendors and actively and affirmatively soliciting their participation through email and/or telephone advisement of the coming procurement, and will fully support equal opportunity and fair treatment of all people in its contracting. NFWB staff involved in the procurement process should be familiar with NFWB's MWBE and SDVOB procedures and goals.

## 9. ANNUAL REVIEW

The Board shall annually review this Policy and Procedure. NFWB's Executive Director shall be responsible for assisting NFWB in conducting an annual review of this Procurement Policy and for an evaluation of the internal control structure established to ensure compliance with this Procurement Policy.

## REVISION INFORMATION

- Originally Adopted January 29, 2018
- Annual Review Completed, and Revisions Made, October 29, 2018
- Revised March 25, 2019 to add Sections 5.8.3 and 5.8.4
- Revised December 14, 2020 to add Sections 1.7, 1.8, and 1.9 and a number of updates and clarifications throughout.

- Revised December 13, 2021, adding language regarding ties to Section 1.3, revising Sections 4.3 and 4.4 to increase the Executive Director's approval authority from \$10,000 to \$15,000, and added Deputy Director of Financial Services to Section 6.
- Revised December 19, 2022, adding Section 5.8.5 related to new procurement guidelines for architectural and engineering services for projects receiving Federal funds and revising Sections 5.8.3 and 5.8.4 to make certain procedures and threshold amounts for professional services procurements consistent with those for procurement of other services as set forth in Section 4.
- Revised April 24, 2023, revising Sections 4.3, 4.4, 5.8, and 5.9 to increase Executive Director's approval authority from \$15,000 to \$20,000.

[Significant revisions and annual reviews should be noted here.]