



TO: Business Officers and Procurement Staff

**FROM: Pamela Swanigan
MWBE Program Management Unit Director**

SUBJECT: Good Faith Effort in Procurement from a NYS Certified Minority and/ or Women-Owned Business Enterprise (M/WBE) for Purchases under the Discretionary Buying Threshold

I. PURPOSE

The purpose of this bulletin is to provide guidelines for the use of the discretionary purchasing authority granted by the New York State Finance Law in the procurement of materials, supplies, equipment and services from NYS certified minority and/ or women-owned businesses (M/WBEs).

II. APPLICABILITY AND SCOPE

This bulletin applies to all Business Officers and procurement staff. It applies to purchases up to \$100,000 for services and commodities not available in the form, function and utility that meets New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD's) needs from Preferred Sources or an Office of General Services (OGS) Centralized Contract.

Generally, the Discretionary Buying Threshold for services and commodities is \$50,000 for State agencies and \$85,000 for OGS. The threshold is increased to \$100,000 for purchases from a firm certified as (M/WBE) by the New York State Department of Economic Development; a NYS Small Business Initiative (NYSSBI); or for purchases of commodities or technology that are recycled or remanufactured (State Finance Law § 163(6)).

Purchases up to \$100,000, under the Discretionary Buying Threshold, are not subject to the formal competitive bidding requirements set forth in State Finance Law § 163, but are subject to the advertising requirement set forth in Economic Development Law Article 4-C. State Finance Law § 112 (2) (a) requires prior approval by the Office of the State Comptroller (OSC) for contracts exceeding \$50,000.

For purchases up to the Discretionary Buying Threshold, Business Officers and procurement staff must:

- (i) ensure that the commodities and services required meet its form, function and utility needs;
- (ii) document and justify the selection of the vendor;
- (iii) document and justify the reasonableness of the price; and
- (iv) ensure that the State buys from responsible vendors.

This bulletin does not apply to:

Construction Contracts

Printing Contracts

III. POLICY

As outlined in OMRDD's M/WBE Policy Statement, issued July 2008, it is the Agency's policy to take affirmative steps to ensure that M/WBEs are given the opportunity to provide OMRDD with commodities and services at competitive prices.

IV. GOOD FAITH EFFORT

NYS Executive Law Article 15-A and OMRDD policy require all Business Officers, and procurement staff, and the vendors and contractors (vendors) with whom they do business, make a good faith effort to procure materials, supplies, equipment and services from M/WBEs and meet Agency established goals for M/WBE participation in contracts. Executive Law Article 15-A applies to all procurements exceeding \$25,000 for labor, services, supplies, equipment, or materials and for procurements exceeding \$100,000 for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements for opportunities involving subcontracts.

This procedure applies to all procurements regardless of dollar value for direct procurements by OMRDD procurement staff and/or Business Officers.

V. ELEMENTS OF A GOOD FAITH EFFORT FOR DISCRETIONARY PURCHASES (NOT EXCEEDING \$100,000)

Consistent with OMRDD M/WBE Policy and State Finance Law Section §163, where commodities or services are available from New York State certified M/WBEs, purchases may be made by OMRDD in amounts not exceeding \$100,000 without formal competitive bidding. Business Officers and procurement staff are required to document in the procurement record support for both the reasonableness of the price and the selection of the vendor. Advertising requirements under NYS Economic Development Law still apply.

1. Determining Reasonableness of Cost

When procuring under the Discretionary Buying Threshold, OMRDD has the responsibility to obtain the commodities or services at a reasonable cost. ("Reasonable" means a "fair market price" based on normal competitive conditions and not necessarily the lowest possible price.)

Reasonableness of price can be established through the following methods:

- (i) comparing the quoted price offered against catalogs, published price lists, retail market surveys;
- (ii) comparing the quoted price with the price for the same or similar services or items purchased within the last six months;
- (iii) comparing the price with other quoted prices;
- (iv) consulting with other public and/or private purchasing officials;

- (v) reviewing the type of service or commodity that was previously accepted by the Agency at a similar price; or
- (vi) using professional experience and judgment, etc.

2. Justification for the Selection of Vendor may be supported by

- (i) demonstrating reasonableness of costs;
- (ii) showing enhanced or best value provided by the vendor;
- (iii) (if applicable) noting the vendor is a NYS small business; and
- (iv) identifying the vendor is a MBE and/or WBE (this **cannot** be the sole justification).

3. Follow-up telephone calls to M/WBE vendors are encouraged (e.g., to determine if the vendor plans on submitting a quote or to engage in negotiations).

Once the authorized individual making the purchase assesses whether the price offered is reasonable and the vendor is responsible, they must then prepare a statement indicating specifically how this determination was made.

VI. Specific “How To” on Documenting Selection

Determine whether the desired service, commodity or technology is available from a preferred source or an OGS centralized contract in the form, function and utility required. If this does not result in a procurement, the following procedures are available.

A. Verification of M/WBE and/or Small Business Firm’s Status

To identify a certified M/WBE, search the NYS Department of Economic Development’s certification database. Empire State Development Corporation’s link to this database can be found on OMRDD Intranet site or search www.NYLovesM/WBE.org

The following are questions that should be asked to determine M/WBE or Small Business firm’s qualifying status.

M/WBE –

1. Are you a NYS certified Minority and/or Women-Owned Business Enterprise?
2. Which of the following agencies did you receive certification from?
 - a. New York State Department of Economic Development
 - b. Metropolitan Transportation Authority
 - c. Port Authority of New York and New Jersey
 - d. Niagara Frontier Transportation Authority
 - e. New York State Department of Transportation
3. Can you fax us a copy of your certification letter?

NYS Small Business Firms—

1. Are you a New York State resident firm?
2. What is the total number of people that are employed by your firm?
3. What is the total number of people that are employed by your firm in NYS?
4. Is your firm independently owned and operated?
5. Where are products primarily manufactured:
 - a. All NYS manufactured
 - b. All manufactured outside NYS
 - c. Manufactured in and outside NYS
6. Where is the firm's principal place of business? (Generally the location of primary control, direction and management of the enterprise)
7. A qualified NYS Small Business must meet the following criteria:
 - a. It is resident in NYS
 - b. It is independently owned and operated
 - c. It is not dominate in its field
 - d. It employs 100 or less persons
8. The following factors are to be considered in making a responsibility determination. For further information, OSC's Vendor Responsibility Summary provides additional information.
 - a. Legal Authority to do business in New York State
 - b. Integrity
 - c. Capacity – both organizational and financial
 - d. Previous performance in governmental contracts

B. Documentation Procedures for Purchases up to \$100,000 from Qualified Vendors

1. Commodities/Technology

a. \$5,000 or Less

- Identify prospective qualified vendor
- The Business Officer and/or procurement staff may purchase the sought after item on the basis of a single reasonable quote; based on reasonableness of cost
- Document vendor qualifications and justification in procurement record

b. Greater than \$5,000 to \$15,000

- Prepare a purchase requisition
- Identify prospective qualified vendors
- Attach required proof of qualifications
- Provide quotes and reasonableness of cost justification for the procurement record

c. Greater than \$15,000 to \$50,000

- Prepare a purchase requisition
- Identify prospective qualified vendors
- Attach required proof of qualifications
- Provide quotes and reasonableness of cost justification for procurement record
- Contract Reporter advertisement documentation is required
- Submit copy of documentation to M/WBE Program Management Unit

d. Greater than \$50,000 to \$100,000

- **This range applies to procurements from NYS certified M/WBEs, NYS Small Businesses or for commodities and technology that are recycled or remanufactured.**
- Prepare a purchase requisition
- Identify prospective qualified vendors
- Attached required proof of qualifications
- Provide quotes and reasonableness of cost justification for the procurement record
- Contract Reporter advertisement documentation is required
- At a minimum, OSC expects to see informal competition in the form of multiple quotes (i.e. at least three)
- Submit copy of documentation to M/WBE Program Management Unit
- The Business Office will review and submit Purchase Requisition to OSC for approval as required

2. Services

a. \$5,000 or Less

- Identify prospective qualified vendor
- The Business Officer and/or procurement staff may purchase the sought after item on the basis of a single reasonable quote; based on reasonableness of cost
- Document vendor qualifications and justification in procurement record

b. Greater than \$5000 to \$15,000

- Prepare a contract purchase order
- Identify prospective qualified vendors
- Attach required proof of qualifications
- Provide quotes and reasonableness of cost justification for the procurement record

c. Greater than \$15,000 to \$50,000

- Prepare a contract purchase order
- Identify prospective qualified vendors
- Attach required proof of qualifications
- Provide quotes and reasonableness of cost justification for the procurement record
- Contract Reporter advertisement documentation is required
- Submit copy of documentation to M/WBE Program Management Unit

d. Greater than \$50,000 to \$100,000

- **This range applies to procurements from NYS certified M/WBEs, NYS Small Businesses or for commodities and technology that are recycled or remanufactured.**
- Prepare a contract purchase order and M/WBE Compliance Memorandum
- Identify prospective qualified vendors
- Attached required proof of qualifications
- Provide quotes and reasonableness of cost justification for the procurement record
- Contract Reporter advertisement documentation is required
- At a minimum, OSC expects to see informal competition in the form of multiple quotes (i.e. at least three).
- Submit copy of M/WBE Compliance Memo to M/WBE Program Management Unit
- The Business Office will review and submit Contract Purchase Order to OSC for approval as required

C. RECOMMENDED LANGUAGE FOR CONTRACT REPORTER NOTIFICATION

Several alternative narratives follow to advertise a procurement opportunity when OMRDD will use discretionary purchasing authority and it is reasonably anticipated that the procurement will exceed \$15,000 but be less than \$100,000.

Alternative I

NYS OMRDD intends to purchase (insert project description, i.e. 1,000 widgets) pursuant to its discretionary purchasing authority under State Finance Law section 163(6), which authorizes purchases without a formal competitive process in certain circumstances, including purchases from New York State small business, from businesses certified pursuant to Article 15-A of the New York State Executive Law and, if applicable, from businesses selling commodities or technology that are recycled or remanufactured. Interested parties should contact (OMRDD designated contact/purchasing officer) to discuss this opportunity.

Alternative II

NYS OMRDD intends to procure (insert project description, i.e. 1,000 widgets) pursuant to its discretionary purchasing authority under State Finance Law section 163(6). This procurement opportunity is limited to New York State small businesses, businesses certified pursuant to Article 15-A of the New York State Executive Law and, if applicable, businesses selling commodities or technology that are recycled or remanufactured.

Alternative III

NYS OMRDD intends to purchase (insert project description, i.e. 1,000 widgets) pursuant to its discretionary purchasing authority under State Finance Law section 163(6). Interested parties should contact (OMRDD designated contact/purchasing officer) for more details about this opportunity.

Please see that your employees are made aware of this bulletin.

Any questions concerning this guidance bulletin should be directed to the M/WBE Program Management Unit at 518-474-5513.

cc: Commissioner Ritter
Executive Deputy Commissioner
Associate Commissioners
DDSO Directors
IBR Director