

BUFFALO ECONOMIC RENAISSANCE CORPORATION

PROCUREMENT POLICY

Effective: Jan 20, 2009

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APPENDIX A

24 CFR 85 Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments Sec. 85.36 and HUD Notice: CPD 96-05 Procurements of Consulting Services by Community Development Block Grant (CDBG) Recipients, HOME Participating Jurisdictions and Sub-recipients

Sources & References:

Federal Procurement Regulations 24 CFR 85, 24 CFR 84 & HUD Notice CPD 96-05
McKinney's Consolidated Laws of New York – Public Authorities Law

I. MISSION STATEMENT & STANDARDS OF CONDUCT

A. MISSION STATEMENT:

Buffalo Economic Renaissance Corporation (“BERC”) is a New York not for profit local development corporation whose primary mission is economic development in the City of Buffalo.

The primary goal and objective of purchasing activities of BERC is to acquire necessary goods and services to meet the needs of BERC within its legal and regulatory framework, in an efficient and effective manner, at a fair and reasonable cost, with timely delivery and proper performance of the procurement process.

BERC’s primary funding source is the United States Department of Housing and Urban Development Community Development Block Grant program. As such, BERC will adhere to federal regulations set forth in 24 CFR 85.36 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), 24 CFR 84.44 (Uniform Administrative Requirements for Grants, Agreements with Institutions of Higher Education, Hospitals and Non-Profit Organizations) and United States Housing and Urban Development Notice: CPD 96-05 (Procurement of Consulting Services by Community Development Block Grant (CDBG) Recipients, HOME Participating Jurisdictions, and Sub-recipients) – see **Appendix A**.

Consistent with federal regulations, BERC places the utmost importance on a procurement process that is fair, unbiased and ensures, to the maximum extent practical, free and open competition without conflicts of interest.

B. STANDARDS OF CONDUCT:

The BERC procurement process is guided by principles of fairness, impartiality, and propriety. Accordingly, BERC endeavors to avoid situation(s) in which it may be adjudged as practicing favoritism or preferential treatment toward a particular vendor, consultant or contractor.

No employee, officer or agent of BERC shall participate in selection, or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) the employee, officer or agent (ii) any member of their immediate family; (iii) their business partner or (iv) an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for the award. Conflicts may be personal, financial or organizational.

Situations in which BERC is to conduct business with organizations whose board members have relationships with BERC personnel may also cause a real or apparent conflict of interest. In such situations, the relevant BERC personnel shall abstain from any decision-making that would directly, and perhaps indirectly, impact on the final selection of the provider.

No employee who exercises functions and responsibilities with respect to CDBG funded activities, shall obtain a financial benefit from those activities, either for themselves or their immediate family (spouse, (step)parent, (step)child, (step)brother, (step)sister, grandparent, grandchild and in-laws of any of the foregoing).

The integrity of the BERC procurement process requires that all providers of goods and services shall be independent parties above any suspicion of having a real or apparent conflict of interest.

While these standards of conduct apply to the procurement of contracts, standards of conduct contained in the BERC Code of Ethics and Conflict of Interest Policy apply at all times (before, during and after procurement).

Additionally, BERC is prohibited from entering into any purchase contracts on behalf of employees. All materials purchased by BERC remain the property of BERC until consumed or disposed of in accordance with applicable laws, rules and regulations.

II. POLICY ADMINISTRATION AND AUTHORITY

Administration of BERC procurement policies and procedures is a function of the BERC Accounting Department. The Accounting Department shall manage the procurement of equipment, supplies and services, within the scope of its authority and in accordance with applicable Federal, State and local policies and procedures.

The President of BERC may delegate responsibility for certain types of purchases and/or negotiations to employees outside of the Accounting Department when it is determined to be in the best interest of BERC.

The BERC Governance Committee shall oversee the procurement policy and review it annually. The Governance Committee shall report the results of its annual review to the Board of Directors. The Board of Directors shall, by resolution, modify the procurement policy as needed.

III. UNAUTHORIZED COMMITMENTS

Individuals shall not enter into purchase contracts, or in any way obligate BERC for procurement indebtedness except as specifically authorized by this document or the President of BERC. Unauthorized purchases and/or contracts ("Unauthorized Commitments") by an individual may be determined to be a personal obligation between the individual and the vendor and as such may not be honored by BERC for payment.

"Ratification" is the process by which BERC recognizes the Unauthorized Commitment as an institutional liability and formally consummates the act under a recognized BERC purchasing instrument and/or contract, authorizes and makes payment. "Ratification", however, is not automatic and requires statements of justification by the affected individual.

When an "Unauthorized Commitment" is identified, the Accounting Department will require the individual(s) committing the unauthorized act to formally address the following points in a memorandum which will accompany a request for payment:

- What the circumstances were at the time that the goods and/or services were acquired which precluded the use of proper BERC procedures, and
- What actions have been taken to preclude a recurrence of the event.
- Acknowledgement that the BERC procurement policy will be reviewed to reinforce the individual's use of same.

Should the President and/or Chief Financial Officer of BERC determine that it would serve the best interest of BERC to recognize the Unauthorized Commitment, the Accounting Department (and BERC Board of Directors if applicable) will "ratify" the act and permit the issuance of a "ratifying" purchasing instrument. Setting aside the manner in which the goods or services were obtained, this judgment will be based on:

- whether there existed a valid need,
- whether funds were available, and
- would have otherwise been properly procured and paid .

Repetitive instances of Unauthorized Commitments may result in further administrative as well as disciplinary action.

IV. PURCHASING PRACTICES

The authority to permit the purchase of any goods or services from a consultant/contractor/vendor resides with the BERC Board of Directors. Exception: contracts in the amount of \$10,000.00 or less may be entered into by authority of BERC President. Contracts authorized by BERC President are required to be reported to BERC Board of Directors as informational items and are subject to the procurement guidelines contained in this Policy.

BERC shall only purchase goods and services that are directly related to BERC's mission and programs, including administrative support thereof.

Consistent with the goal of contracting/purchasing in a cost-effective and efficient manner:

- BERC shall avoid purchasing unnecessary items.
- Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical and practical.

Regardless of the solicitation method used, BERC's preliminary cost estimates (if any) are to be safeguarded at all times and "for internal use only."

A. CONTRACTUAL/CONSULTANT SERVICES – It is the general policy of BERC to acquire contractual/consultant services (work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered

does not consist primarily of acquisition by BEREC of equipment or materials) by seeking competition.

The following types of services are generally exempt from adherence to procedures for securing contractual/consultant services:

- Services provided by individuals by direct employment contracts with BEREC.
- Public utility services (gas, water, electricity).
- Telephone, telegraph, and cable services furnished by utility companies.
- Services provided which are subject to published tariff rates as established by the Interstate Commerce Commission.
- Services which are merely incidental to the purchase of supplies, materials or equipment.
- Services provided directly by an agency of the State, Federal or Local Government, or their employees when performing the service as a part of their normal governmental function.

Prior to a BEREC employee seeking to obtain a contractual service, he/she should make all of the following determinations:

- that funds are available to cover the total cost of the service
- that the desired level of quality of the service is adequate and reasonable for the purpose intended
- that all rules, regulations and procedures referred to herein have been or will be complied with, and
- that obtaining the service is in the best interest of BEREC.

In order to provide for open and free competition, an adequate number of competing service providers must be part of the competitive process. This can be accomplished by ensuring an appropriate level of advertising. To the extent practicable, BEREC shall advertise for professional service providers in widely circulated newspapers, trade journals and other sources that can ensure coverage of the marketplace.

1. *Construction Services* – All contracts for construction services entered into by BEREC shall be procured via the **Invitation for Bids (“IFB”)** method as defined below.

2. *Contracting/Consulting Services (more than \$50,000)* - Contracts in the amount of more than \$50,000 for goods and services (construction excepted) shall be procured via the **Request for Proposals (“RFP”)** method as defined below.

3. *Contracting/Consulting Services (\$50,000 or less)* - Contracts for goods and services (construction excepted) \$50,000 or less may be procured by either via the **RFP** method or the request for quotations (“**Small Purchase Procedures**”) method as defined below.

4. *Architectural and Engineering Services* – Contracts for architectural and/or engineering services may be procured by soliciting a **Request for Qualifications (“RFQ”)** as defined below. In accordance with New York Public Authorities Law §2879, BEREC shall not refuse to negotiate with an architectural, engineering or surveyor firm solely because the ratio of

the “allowable indirect costs” to direct labor costs of the firm or the hourly labor rate in any labor category of the firm exceeds a limitation generally set by BERC in the determination of the reasonableness of the estimated cost of services to be rendered by the firm, but rather BERC should also consider the reasonableness of cost based on the total estimated cost of the service of the firm which should include, among other things, all the direct labor costs of the firm for such services plus all “allowable indirect costs,” other direct costs, and negotiated profit of the firm. “Allowable indirect costs” are those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits.

5. *Consultant Employees* - Consultant services provided under an employee/employer relationship are not governed by the procurement requirements of this Policy. Rather, BERC must follow its formal personnel policies and procedures in obtaining consultant services. The consultant employee shall: have a description of his or her duties (position description), be supervised by BERC, and be subject to the normal periodic interaction that takes place between an employee and his or her supervisor. CDBG funded employment contracts shall be advertised, have a maximum term of three years, and compensation shall be at a reasonable rate. In no event can the amount of compensation exceed the maximum daily rate of compensation for Level IV of the Executive Schedule (ES) as established by Federal law.

B. SERVICE CONTRACT RENEWALS/EXTENSIONS - Unless stated in the solicitation documentation that the contract to be awarded calls for multi-year funding, contracts cannot be renewed or extended without further competition. Professional services which are to be provided for a longer period than originally procured must be readvertised.

C. SERVICE CONTRACT RESTRICTIONS - BERC shall not engage any firm included on “The Lists of Parties Excluded from Federal Procurement or Non-Procurement Programs” published by the General Services Administration.

D. CONTRACTS FOR GOODS - Contracts in the amount of **more than \$50,000** for goods shall be procured via the **Request for Proposals** (“RFP”) method as defined below. Contracts for goods **\$50,000** and under may be procured by either via the **RFP** method or the request for quotations (“**Small Purchase Procedures**”) method as defined below.

All products purchased shall be recycled products, which meet contract specifications, unless the only available product does not contain recycled content, and provided that the cost of the recycled product does not exceed a cost premium of ten percent above the cost of a comparable product that is not a recycled product or, if at least fifty percent of the secondary materials utilized in the manufacture of that product are generated from the waste stream in New York state, the cost of the recycled product does not exceed a cost premium of fifteen percent above the cost of a comparable product that is not a recycled product.

A “recycled product” is any product which has been manufactured from secondary materials (as defined in [subdivision one of section two hundred sixty-one of the economic development law](#)) and meets the requirements of [subdivision two of section 27-0717 of the environmental conservation law](#) and regulations promulgated pursuant thereto.

Whenever BEREC purchases printing on recycled paper, it shall require the printed material to contain the official state recycling emblem established pursuant to [subdivision two of section 27-0717 of the environmental conservation law](#) and regulations promulgated pursuant thereto if such paper has been approved by the department of environmental conservation as satisfying the requirements of such statute and regulations, or, if such paper has not been so approved, require the printed material to include a printed statement which indicates the percentages of pre-consumer and post-consumer recycled material content of such paper.

V. METHODS OF PROCUREMENT

Solicitations for services under the Request for Proposals, Request for Qualifications and Sealed Bids methods shall be advertised in widely circulated newspapers, trade journals and other sources to ensure coverage of the marketplace. A quick reference sheet concerning the various methods of procurement is attached hereto as **Exhibit A**.

A. INVITATION FOR BIDS (“IFB”) – This is the preferred method for procuring construction services. It involves the public solicitation of bids for the performance of certain work (via issuance of an IFB). Responses to IFBs are submitted as "sealed bids" and the sealed that are considered confidential until award. No discussions, disclosure of price costing information nor relative positions of bidders are permitted under an IFB. Awards are premised solely on that which was solicited and responded to. **The contract is awarded to the most responsible and responsive bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.** The price shall be firm and fixed.

Notwithstanding the foregoing, BEREC is permitted to perform a cost reasonableness analysis. BEREC may conduct pre-award reviews where the “apparent lowest bidder” will not be the awarded of the procurement (i.e. price is far below reasonable market price). When the apparent low bidder is not awarded the contract, BEREC must document its application of cost reasonableness, as provided in [OMB Circular A-122](#).

With respect to the IFB, its specifications must not be overly restrictive and the IFB shall be distributed to an adequate number of qualified sources. Contents of the IFB shall comply with the guidelines for the RFP set forth in Section V(B)(1) of this Policy.

B. REQUEST FOR PROPOSALS (“RFP”) - This is the preferred method to use when procuring consulting services. Pursuant to HUD guidance, under this method, an RFP is prepared containing a statement of work that details the procurement requirements needed by BEREC. The RFP must clearly and accurately state selection criteria against which all responding proposals will be evaluated, and shall be solicited to an adequate number of qualified sources. If an adequate number of individuals/firms respond to the RFP, a qualified panel will review the proposals against the factors for award identified in the RFP. Awards will be made to the responsible offeror whose proposal is most advantageous to the program, with price and other factors considered.

1. **The RFP** - All RFPs shall, at a minimum, contain the following:

- a. A clear and accurate description of the technical requirements for the material, product or service to be procured. The description shall not contain features which unduly restrict competition. including without limitation the following:
- Placing unreasonable requirements on firms in order for them to qualify to do business;
 - Requiring unnecessary experience and excessive bonding;
 - Noncompetitive pricing practices between firms or between affiliated companies;
 - Noncompetitive awards to consultants that are on retainer contracts;
 - Organizational conflicts of interest;
 - Specifying only a “brand name” product instead of allowing “an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
 - Any arbitrary action in the procurement process.
- b. Requirements which the offeror must fulfill and all other factors to be used in evaluating the proposals.
- c. A description, whenever practical, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- d. The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
- e. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
- f. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- g. If for architectural engineering services, relevant maps and site locations and starting and ending dates.
- h. If services will be used for construction projects, it is advisable to schedule pre-bid construction meeting to discuss the project, wage rates, responsibilities, on-site monitoring procedures and other pertinent subjects.
- i. A statement that information concerning the availability of New York state subcontractors and suppliers is available from the New York state department of economic development, which shall include the directory of certified minority and women-owned businesses, and it is the policy of New York state to encourage the use of New York state subcontractors and suppliers, and it is the policy of the City of Buffalo to encourage the use of City of Buffalo subcontractors and suppliers, and to promote the participation of minority and women-owned businesses where possible, in the procurement of goods and services.

2. The Evaluation Process - The qualified panel will use a competitive range procedure in its evaluation to establish a ranking order of successful proposals which may lead to a determination of whether oral discussions (negotiations) should be held with offerors that fall within the competitive range, or if the contract should be awarded to the top offeror in the range.

The competitive range will include those offerors who, after a scoring of their proposals, appear to have the greatest potential to satisfy the terms and conditions of the RFP. Usually these

offerors will be invited to an oral discussion and asked to submit, subsequent to such discussion, a "best and final offer." "Best and final offers" are re-scored with the best of the best selected as the winner of the competition, subject to negotiation of a fair and reasonable price.

After proposals are reviewed by the panel against the evaluation criteria (a combination of cost/price and other relevant factors) in the RFP, written results of the reviews must be maintained as part of the documentation of the procurement process. Unlike the sealed bids method of procurement, under the RFP method, there is no public disclosure of the contents of the offerors' proposals. However, if requested, BERC shall debrief or notify unsuccessful offerors of the winner and the conclusion of the procurement process.

C. SMALL PURCHASE PROCEDURES – This method is available for securing services, supplies or other goods that do not cost more than \$100,000 in the aggregate. If small purchase procedures are used, price or rate quotations will be obtained from an adequate number (three to five) of qualified sources." **The award shall be issued to the vendor whose solicited information is the most responsive to the item/service being procured.**

To obtain rate and price quotations vendors can be phoned and their names, addresses and price or rate quotations should be recorded. Catalogues or price lists may also be used. It is important that the relatively smaller dollar amounts associated with small purchases and the informal nature of this procurement method do not create a climate in which the emphasis on full and open competition is diminished.

If small purchases become complex, it may be advantageous to use a written solicitation and to request written responses from potential providers of the solicited goods/services.

D. REQUEST FOR QUALIFICATIONS ("RFQ") – This method does not include price as an initial selection factor and may only be used to procure architectural and/or engineering services. It cannot be used to procure other types of services through architectural/engineering firms (i.e. construction management). This form of procurement is qualifications-based. **The competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.**

Geographic preference may be used as a selection factor if adequate competition (i.e., 2 or more offerors who are responsive and responsible) exists and New York law governing the procurement of architectural and engineering services permits.

The qualification statements received should be reviewed and ranked by a qualified panel or committee. The most qualified A/E service providers can be asked to submit requests for proposals or the most qualified can be selected and price negotiated with the selected firm.

E. NON-COMPETITIVE PROCEDURES - This method involves procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

This is the procurement method of last resort. It may only be used when:

1. the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals AND
2. one of the following circumstances applies:
 - The item is available only from a single source;
 - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - BERC authorizes noncompetitive proposals; or
 - After solicitation of a number of sources, competition is determined inadequate.

It is important that ample support and justification exist for the use of the noncompetitive method of procurement. Events that require efficiency in the procuring of services (e.g., an untimely event occurs that may be judged a crisis, the failure to procure the good/service right away will be to the severe detriment of BERC, BERC employees, property, or the public) may lead to initiating a one and only contractor selection process and awarding the contract to that firm. However, whenever possible, the procurement period should be shortened rather than eliminated. In any event, BERC shall act responsibly in its use of public funds.

In the event of a contract renewal where the existing contractor has accumulated experience in the subject area of work, and/or it is perceived that a new procurement initiative would be no more than an exercise with the current contractor being selected anyway, the procurement process should nevertheless be implemented. To the extent possible, other providers of the goods/services shall be given an opportunity to compete.

F. SELECTION CRITERIA – Contracts shall be made only with responsible vendors and service providers who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as:

1. Integrity;
2. Compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u);
3. Record of past performance;
4. Financial and technical resources or accessibility to other necessary resources;

VI. SMALL, START UP/EARLY STAGE, MINORITY AND/OR WOMEN OWNED, BUSINESSES

A. GENERAL - It is the policy of BERC to make positive efforts to ensure that small business, startup/early stage, minority-owned firms and women's business enterprises are utilized to the fullest extent practicable and facilitate a fair share of the awarding of contracts to such enterprises.

In the event of a solicitation for goods and/or services, to the extent practicable, BERC shall take the following steps to further this goal:

1. Make information on forthcoming opportunities available through advertising and outreach and arrange time frames for purchases and contracts to encourage and facilitate

participation by small businesses, startup/early stage businesses, minority-owned firms and women's business enterprises.

2. Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, startup/early stage, minority-owned firms and/or women's business enterprises.

3. Encourage contracting with consortiums of small businesses, startup/early stage businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

4. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency, the New York State and Erie County lists of registered WMBEs, and lists compiled by the Buffalo Niagara Partnership, in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

B. CONTRACTS OF ONE MILLION DOLLARS OR MORE – BERC shall notify City of Buffalo and New York state business enterprises of opportunities to participate as subcontractors and suppliers on procurement contracts let by BERC in an amount estimated to be equal to or greater than one million dollars. Once awarded the contract such contractors shall document their efforts to encourage the participation of City of Buffalo and New York state business enterprises as suppliers and subcontractors on procurement contracts equal to or greater than one million dollars. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has (a) solicited bids, in a timely and adequate manner, from City of Buffalo and New York state business enterprises including certified minority and women-owned business, or (b) contacted the New York state department of economic development to obtain listings of City of Buffalo and New York state business enterprises, or (c) placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in the City of Buffalo and also those publications distributed throughout New York state, or (d) participated in bidder outreach conferences. If the contractor determines that either City of Buffalo or New York state business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement to BERC verifying such intent.

VII. DOCUMENTATION

BERC shall maintain pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, records memorializing small purchase quotations, etc. BERC shall maintain records that explain what procurement method was applied, why it was applied, a description of how it was applied, a description of who chose the awardee and how, demonstrate that the awardee is not on HUD's debarment and suspension list, that the contract was authorized by the appropriate body (President or Board of Directors) and that the contract is an eligible use of the applicable funding. In addition, BERC shall maintain all documents submitted by offerors as well as documentation of all contracts procured via Small Purchase Procedures that includes who was contacted (name and address), the date of contact, the vendors' price(s) and other information provided that formed the basis for making a decision as to whom the contract would be awarded.

Attached as **Exhibit B** is a worksheet for staff to use to facilitate recordkeeping.

VIII. CONTRACT ADMINISTRATION

B. CONTRACT AUTHORITY AND REVIEW

Contracts for \$10,000.00 or less may be entered into at the discretion of the President of BERCC. All other contracts require approval of the BERCC Board of Directors. Regardless of the foregoing, any contract involving services to be rendered over a period in excess of one year shall require the approval of the Board of Directors by resolution, and such contracts shall be reviewed by the Board annually. BERCC shall not enter procurement contracts which involve former officers or employees of the corporation who separated from BERCC less than five (5) years prior without prior disclosure and consent by resolution of the Board.

Contracts for services in the amount of \$5000 or more shall be in writing. Contract for goods shall be in writing in accordance with the statute of frauds.

C. CONTRACT TYPE

BERCC shall determine the type of contract to use (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts), as it deems appropriate for the particular procurement and for promoting the best interest of the program or project involved.

The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

D. CONTRACT COMPLIANCE

All contracts are reviewed for eligibility, funding and satisfaction of laws by BERCC staff. BERCC staff shall ensure that notification requirements set forth in this Policy for construction contracts estimated or actually in the amount of \$1 million or more are satisfied. Questions concerning compliance with CDBG regulations shall be directed to Buffalo Urban Renewal Agency ("BURA"), BERCC's CDBG monitor. All contracts are reviewed and approved as to form by the BERCC General Counsel. Compliance with applicable Davis Bacon and Section 3 requirements is ensured by the BURA Section 3 Coordinator or other BURA designee.

E. PARTIAL AND ADVANCE PAYMENTS

BERCC, as a general practice, does not favorably view requests made by a vendor for payments which may precede performance ("advance payment") or during the course of performance prior to completion or delivery ("partial payment").

BERCC, however, does permit select instances in which advance payments and/or partial payments may be made as deemed appropriate by the President under the circumstances (i.e. where a substantial initial investment may be required for a commodity which has a protracted or long production lead time, periodical subscriptions, registration fees or reservation deposits).

F. CONTRACT PROVISIONS

Contracts for goods and services shall comply with the contract requirements of the applicable funding source. In addition, they shall comply with New York Public Authorities Law contract requirements (including, without limitation, disqualification and anti-collusion provisions of §§2876 and 2878).

Contracts shall include provisions concerning the nature and monitoring of the work to be performed, the use of BEREC supplies and facilities, the use of BEREC personnel and any other relevant provisions.

Contracts shall include provisions requiring the awardee to notify City of Buffalo residents of employment opportunities arising in the City of Buffalo out of procurement contracts let by BEREC. Awardees shall be required to comply with the requirements of the City of Buffalo First Source Agreement and submit post-award compliance reports documenting their efforts to provide such notification.

Contracts shall contain provisions which will assure compliance with the federal equal employment opportunity act of 1972 (P.L. 92-261), as amended, by BEREC contract awardees.

IX. CONFIDENTIALITY

The confidentiality of BEREC cost estimates for a requirement, offeror and/or bidder proprietary product data, the competitive position of offerors and bidders, pricing information, technical evaluation information, and other information which may potentially enhance the advantage of one offeror or bidder over another must be maintained throughout the entire purchasing process until award is made. This practice is a vital component of maintaining the integrity of the BEREC procurement process. Improper release of such information may compromise the ability of BEREC to procure commodities or services in a competitive and equitable market and impair future purchases.

X. REPORTING

In accordance with New York Public Authorities Law §2879 all contracts for goods and services, in the actual or actual or estimated amount of five thousand dollars or more shall be in writing.

Within 60 days of the end of the fiscal year, BEREC shall prepare an annual report on procurement contracts entered into by BEREC for goods and services, in the actual or actual or estimated amount of five thousand dollars or more. The report shall summarize procurement activity during the fiscal year and include a list of all procurement contracts entered into, all contracts entered into with City of Buffalo and New York state business enterprises and the subject matter and value thereof, all contracts entered into with foreign business enterprises (businesses outside of New York state), and the subject matter and value thereof, the selection process used to select such contractors, all procurement contracts which were exempt from the publication requirements of article four-C of the economic development law, the basis for any such exemption and the status of existing procurement contracts.

The report shall also contain this procurement policy and any amendments thereto since the last annual report. Such report on procurement contracts may be a part of any other annual report that the corporation is required to make.

BERC shall annually submit its report on procurement contracts to the division of the budget and copies thereof to the department of audit and control, the department of economic development, the senate finance committee and the assembly ways and means committee via the New York State Authority Budget Office ("ABO") PARIS system (or other system designated by the ABO).

BERC shall make available to the public copies of its annual report on procurement contracts upon reasonable request.

XI. PROTEST OF AWARD PROCEDURES AND VENDOR DISPUTES

In the preparation of requirements and specifications and the solicitation of such, effort shall be made to avoid creating any conditions which may contribute to the protest of an award. In the event that a protest occurs, it is BERC's policy to resolve the protest(s) effectively at the lowest administrative level possible and to maintain integrity and confidence in BERC's purchasing processes.

"Protest", as used herein, means a written objection by an interested party to a solicitation for offers as to matters which may affect a proposed award.

"Protestor," as used herein, means an actual or prospective offeror/bidder whose direct economic interest would be adversely affected by an award or by the failure of an award to be made. To be considered a valid "protest", the objection must be submitted in writing to BERC by the aggrieved party.

A. CONDITIONS FOR PROTEST

Protests of award generally result from the existence of specifications or terms and conditions in a solicitation assessed by a prospective vendor or contractor to be preferential or unobtainable. Protests may also result from the challenge of an award to a specific vendor or contractor which is assessed by another prospective vendor or contractor as not having the capacity and/or capability to perform the award as specified.

Protests may be filed for cause no later than fifteen (15) consecutive calendar days from the date of the protested award. All Protests must be based on conditions that are apparent in the contract solicitation and/or award processes.

If a Protest is filed with BERC prior to an award, the Protest shall not be considered. The award shall be made and the protesting party so informed in writing.

To be fully considered, Protests must clearly contain and address the following elements:

- Name, address, and telephone number of Protestor.

- Solicitation number, or Purchase Order number, and date of item under protest.
- A detailed statement of the factual grounds for the protest accompanied by copies of all relevant documents. This statement must contain specific sound reasons and attach any supporting documentation supporting why the party is protesting an award.
- A concise statement as to the form of relief requested by the Protestor.

B. PROTEST RESOLUTION PROCEDURES

BERC General Counsel is the BERC designee for Protest resolution. Protests of award must be filed by a Protestor within 15 consecutive calendar days from the date of the protested award to the BERC, 920 City Hall, Buffalo, New York. Filings not made within this period will not be considered.

Following the receipt of a Protest, the Protest will be provided to BERC General Counsel who will direct the research of the Protest and prepare findings and conclusions.

If the Protest does not contain the information required of a Protestor, BERC General Counsel may refuse the Protest and so inform the Protestor in writing within five (5) business days of the receipt of the Protest.

If the Protest shows merit in the opinion of BERC General Counsel, General Counsel may convene a fact-finding meeting with the Protestor to fully determine the nature of the Protest and to make an initial attempt to resolve the disputed conditions. It is the preference of BERC to bring the Protest to a conclusion, by mutual agreement, at the time of this meeting with the Protestor without inhibiting the proposed award or nullifying the actual award.

Should this fact finding meeting not resolve the Protest, BERC General Counsel may either convene a Protest Meeting to be attended by BERC President or issue a written position to the Protestor.

Where a Protest Meeting is convened, scheduling of the meeting will be attempted within fifteen (15) business days of receipt of the Protest. The President of BERC will issue a written decision within five (5) business days from the date of the Protest Meeting.

If the written decision of the BERC President is appealed (within the BERC purview), a response will be tendered from the BERC Governance Committee, but only after the receipt of the Protestor's formal written appeal. Such an appeal must be submitted to the BERC President, in writing, within ten consecutive calendar days of the date of the written decision appealed from. The Governance Committee may elect to meet with the Protestor. The Governance Committee shall issue a decision concerning the appeal within sixty (60) days of receipt of the appeal by the President.

EXHIBIT A

BERC Procurement Policy
Quick Reference Sheet
For detailed information, see the full BERC Procurement Policy

Solicitation Procedure:

1. Sealed bids
 - a. Issue an Invitation for Bids – distribute to an adequate number of qualified sources
 - b. Receive Sealed Bids – keep confidential until award
 - c. Open Sealed Bids publicly
 - d. Selection Standard: lowest responsible bidder**
 - e. If apparent lowest bidder is not awarded the contract, document reasons why (i.e. price is far below reasonable market price)

2. Request for Proposals
 - a. Issue RFP (containing statement of work and evaluation criteria) – distribute to an adequate number of qualified sources
 - b. Receive proposals
 - c. Qualified panel review and score proposals (maintain written evaluations)
 - d. *Optional:* Conduct interviews, negotiate best and final offers
 - e. Selection Standard: responsible offerer whose proposal will be most advantageous to BERC (price and other factors considered)**
 - f. Notify offerers that they were successful/unsuccessful, whatever the case may be

3. Small Purchase Procedures/Request for Quotations
 - a. Obtain price or rate quotes from at least 3-5 qualified sources
 - b. Document name, address and price/rate quote of each source
 - c. Quotes may be obtained by telephone, in writing, using catalogs or price lists
 - d. Selection Standard: lowest responsive and responsible source**

4. Request for qualifications
 - a. Solicit for architect/engineering firm's qualifications
 - b. Evaluate qualifications (geographic location may be considered under this procurement method only)
 - c. Selection Standard: most qualified competitor**
 - d. Competitor is selected subject to negotiation of a fair and reasonable price

5. Sole Source/Non-Competitive Procedures
 - a. Document that 2 part test required to substantiate use of this method is satisfied

Contracts that do not have to be procured:

1. Employment contracts
2. Services incidental to purchase of supplies, materials or equipment
3. Telephone, cable and utility services

EXHIBIT B

Buffalo Economic Renaissance Corporation ("BERC")
Procurement Policy Worksheet

The purpose of this worksheet is to ensure compliance with the BERC Procurement Policy.

Name: _____

Title: _____

Date: _____

Description of goods/ services to be procured: _____

Anticipated cost: _____

Basis for Anticipated cost (i.e. catalog, price most recently paid, etc.) _____

Funding Source: _____

CFO Approval (*funds available and purchase is not duplicative/unnecessary*):

CFO Signature

Date

Method of Procurement

- _____ Small Purchase Procedures/Request for Quotes - *goods/services (NOT CONSTRUCTION) \$50,000 or less*
- _____ Sealed Bids – *construction services*
- _____ Request for Proposals – *services (NOT CONSTRUCTION) over \$50,000*
- _____ Request for Qualifications – *architectural/engineering services*
- _____ Sole Source (Award of contract is not feasible AND either: 1. the good/service is only available from one source 2. public exigency or emergency will not permit delay 3. funding source expressly authorizes this method OR 4. after soliciting a number of sources, competition is deemed inadequate)

Contractor/Consultant Selection (See page 2 for standards)

- _____ Verify that selected firm is not debarred or suspended by GSA at <http://www.epls.gov/>
- _____ Verify that selected firm is responsible and capable of successful performance (*consider integrity, compliance with public policy, record of past performance, financial/technical resources, etc.*)
- _____ Supporting Documentation (attach to this Worksheet)

Contract Type:

- _____ fixed price (preferred)
- _____ cost reimbursement
- _____ material/time (No other contract type is suitable and a ceiling price is included)

Authority to Contract:

President Signature

Date

Date of Board of Directors Approval/Notification (Approval required if over \$10,000 or for a term of more than one year – otherwise notification required): _____
Date