

ECMC Corporation

Procurement Guidelines

Effective March 1, 2016.

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I. STATEMENT OF PURPOSE AND SCOPE

A. Authority.

1. Public Authorities Law, Article 9, Title 4, New York Statutes, as amended.

Public Authorities Law, Article 10-C, New York Statutes, as amended (the “ECMCC Act”).
2. General Municipal Law, Article 5-A, New York Statutes, as amended.
3. Public Health Law, Article 28, New York Statutes, as amended.
4. Executive Law Article 15A, New York Statutes, as amended.
5. State Finance Law, Article 9, New York Statutes, as amended.
6. Economic Development Law, Article 4-C, as amended.

B. Purpose.

The purpose of these Procurement Guidelines (“Guidelines”) is to set forth the procedures for purchasing supplies, equipment, materials, construction and services, including professional services, for Erie County Medical Center Corporation (“ECMCC”). These Guidelines are applicable to ECMCC and may be applied by ECMCC in other contexts, in its discretion.

C. Interpretation.

These Guidelines shall be construed and applied to promote compliance with all applicable laws. In the event of a conflict between these Guidelines and the requirements of any applicable law, the applicable law will prevail.

D. Application of These Guidelines.

1. Effective Date. These Guidelines are effective March 1, 2016.
2. Scope. These Guidelines shall apply to all contracts for construction and the purchase of all supplies, equipment, materials and services, including professional services, made by ECMCC irrespective of the source of funds, except as otherwise provided by law.
3. Severability. If any provision of these Guidelines or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of these Guidelines which can be given effect without the invalid provision or application, and to this end the provisions of these Guidelines are declared to be severable.
4. Annual Review. These Guidelines, as adopted pursuant to Section 2879 of the Public Authorities Law and Section 104-b of the General Municipal Law, shall be subject to review and may be changed without notice by the Board of Directors of ECMCC. The Guidelines are for the use of ECMCC and should not be relied upon as establishing any right by any person or entity other than ECMCC.

G. Referenced Policies.

1. Minority and Women-Owned Business Enterprise (“MWBE”) Participation Policy
2. New York State Business Enterprise (“NYSBE”) Participation Policy
3. Property Disposal Policy
4. Preferred Source Policy
5. Procurement Disclosure Policy

II. DEFINITION OF TERMS

A. Definitions.

The following terms shall, for purposes of these Guidelines, have the meanings set forth below unless the context clearly indicates a different meaning:

1. Best Value. The basis for awarding Contracts for services to a Contractor that optimizes quality, cost and efficiency, among responsive and responsible bidders. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for bidders that are Small Businesses or Minority- or Women-owned Business Enterprises to be used in evaluation of Bids or Proposals for awarding of Contracts for services. In any case where a responsible bidder's or responsible offeror's gross price is reducible by an allowance for the value of used machinery, equipment,

apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the Best Value.

2. Bid. An offer or proposal submitted in response to an Invitation for Bids.
3. Construction. The building, renovation, retrofitting, rehabilitation, restoration, painting, alteration or repair of any real property or improvements thereon, exclusive of the installation and assembly of any medical equipment, apparatus or device.
4. Consulting Services. Analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services.
5. Contract. A written agreement, memorandum of understanding, letter agreement, letter of intent, or purchase order that formalizes the obligations of all parties involved.
6. Contractor. Any individual, business or other legal entity awarded a Contract to furnish goods or services to ECMCC.
7. Contract Value. The total value of a Contract, including all renewal options. If the value of the Contract is not known or cannot be determined at the time the Contract is awarded (i.e., a service Contract that states an hourly fee but does not state the total hours of service to be provided; a commodities Contract that states the price of the commodities but does not state the total volume of commodities to be purchased), the Contract Value shall be the total amount that ECMCC reasonably anticipates spending under the Contract during the term and any renewal options. With respect to joint Procurements, the amount to be expended by entities other than ECMCC shall be excluded from the Contract Value.
8. County. The County of Erie, New York.
9. Foreign Business Enterprise. shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation, which offers for sale, lease or other form of exchange, goods sought by RPCI and which are substantially produced outside New York State, or services sought by RPCI and which are substantially performed outside New York State.
10. Group Purchasing Organization (GPO). An entity that aggregates the purchasing volume of members, such as hospitals and health-care providers, to leverage discounts with manufacturers, distributors and other vendors intending to realize administrative savings and efficiencies.
11. Invitation for Bids (IFB). A formal competitive solicitation seeking sealed Bids for Construction work or specified goods or services, pursuant to which award is made to the responsive and responsible bidder(s) submitting the lowest price, provided that Contracts for goods and services (excluding Contracts for services necessary for the completion of a Construction project) may be awarded on the basis of Best Value to a responsive and responsible bidder. Generally, IFBs are used for the Procurement of Construction, equipment, materials and supplies.
12. Medical Building. The component of a Medical Project constituting appurtenant structures or facilities necessary to house or render the remaining components of the Medical Project

operational. Medical Building does not include apparatus, equipment, devices, systems, supplies, or any combination thereof.

13. Medical Project. Any substantial durable apparatus, equipment, device, or system, or any combination of the foregoing, including services necessary to install, erect, or assemble the foregoing, and any Medical Building, to be used for the purpose of care, treatment or diagnosis of disease or injury or the relief of pain and suffering of sick or injured persons. Medical Projects do not include ordinary supplies and equipment expended or used in the customary care and treatment of patients.
14. Minority or Women-Owned Business Enterprise (“M/WBE”). A business certified under Article 15-A of the Executive Law that is independently owned, operated and authorized to do business in New York State; and is owned and controlled by at least 51% women or minority group members, respectively, who are citizens of the U.S. or permanent resident aliens. Such ownership must be real, substantial and continuing, and the minorities or women must have and exercise the authority to control independently the day-to-day business decisions of the enterprise.
15. New York State Business Enterprise. A business enterprise, including a sole proprietorship, partnership, limited liability company or business corporation, which offers for sale or lease or other form of exchange, goods which are sought by ECMCC and which are substantially manufactured, produced or assembled in New York State, or services which are sought by ECMCC and which are substantially performed within New York State.
16. New York Resident. A natural person who maintains his or her permanent and principal home, within New York State and to which such person, whenever temporarily located away from such home, always intends to return.
17. New York State Contract Reporter (NYSCR). A publication of procurement opportunities printed for the New York State Economic Development Bureau pursuant to the New York State Economic Development Law.
18. Personal Services. Any services performed for a fee, commission or other compensation by persons or organizations that are not providing such services as employees of ECMCC. Personal Services include, but are not limited to, professional services or any other services of a consulting, technical or professional nature.
19. Preferred Source. Contractors selected in accordance with ECMCC’s Preferred Source Policy and State Finance Law Section 162, offering specific commodities or services that meet the form, function and utility requirements of ECMCC.
20. Project Developer. Any individual or entity that has submitted a Proposal in response to a Request for Proposals for a Medical Project.
21. Procurement. The acquisition of goods and/or services.
22. Procurement Contract. Any written agreement to which ECMCC is a party for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more.

23. Procurement Record. Documentation of the decisions made and the approach taken with respect to a Procurement.
24. Professional Services. Services involving the provision of advice, instruction or specialized work from an individual, firm or corporation specifically qualified or licensed to provide such services including, but not limited to, accounting, legal, health care, consulting and management services.
25. Proposal. An offer or response submitted in response to a Request for Proposals.
26. Recycled Product. A product that is manufactured from secondary materials as defined in the Economic Development Law §261(1).
27. Request for Proposal (RFP). A competitive solicitation seeking Proposals for a specified service or technology, pursuant to which an award is made to the responsive and responsible respondent offering the best value. Generally, RFPs are used for the Procurement of services, information technology systems, and consultants.
28. Responsible. The status afforded an individual or company based on factors such as: financial ability and organization capacity; legal authority to conduct business in New York State; integrity as it relates to business related conduct; and past performance.
29. Responsive. Meeting the minimum Specifications or requirements as prescribed in a solicitation for goods or services.
30. Small Business. A business which is resident in New York State, independently owned and operated, not dominant in its field and employs one hundred or less persons.
31. Specifications (Requirements). Description of the physical or functional characteristics or the nature of a good, the work to be performed, the service or products to be provided, the necessary qualifications of the offeror, the capacity and capability of the offeror to successfully carry out the proposed Contract, the process for achieving specific results and/or anticipated outcomes, or any other requirement necessary to perform the work.
32. State Contract. (1) any Contract and amendment(s) thereto for labor, services (including legal, financial and other professional services), travel, supplies, equipment, materials or any combination of the foregoing, having a Contract Value in excess of \$25,000; and (2) any Contract for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon with a Contract Value in excess of \$100,000.

III. SOURCE SELECTION

A. Methods of Source Selection.

Unless otherwise authorized by law, all ECMCC Contracts will be awarded in accordance with one of the following Sections of these Guidelines:

- (a) Section III.B (Preferred Source)
- (b) Section III.C (Invitation for Bid);
- (b) Section III.D (Request for Proposal);

- (c) Section III.E (Discretionary Procurements);
- (d) Section III.F (Medical Projects);
- (e) Section III.G (Exemptions);
- (F) Section III, H. (Joint Purchase).

B. Preferred Source.

Prior to engaging in any other method of source selection for the purchase of goods or services, ECMCC shall assess, in accordance with the ECMCC Preferred Source Policy and Section 162 of the State Finance Law, whether the desired goods or services are available from an offeror that has been afforded Preferred Source status, including the Department of Correctional Services Industries Program and qualified charitable agencies for the blind. If a Preferred Source has goods or services available in the form, function and utility consistent with the needs of ECMCC, such goods or services shall be procured in accordance with the requirements of State Finance Law section 162 and ECMCC's Preferred Source Policy. If a good or service is not available in form, function and utility consistent with the needs of ECMCC from a Preferred Source, ECMCC may then exercise its authority to utilize any of the applicable Source Selection Methods set forth in these Guidelines.

C. Invitation for Bid.

1. Conditions for Use. Contracts will be awarded competitively by evaluating Bids submitted in response to an Invitation for Bid, except as otherwise provided in these Guidelines.
2. Invitation for Bid. When the estimated amount of Procurement exceeds \$20,000 for supplies and services, or \$35,000 for public construction projects, and does not qualify as a Discretionary Procurement (see Section III.E) or for an Exemption from Formal Competition (see Section III.F), ECMCC will issue an Invitation for Bid which shall include Specifications and the contractual terms and conditions applicable to the Procurement.
3. Public Notice. ECMCC must publish notice of the IFB in a daily newspaper, having general circulation in the County, at least five (5) days prior to the date set forth therein for the opening of Bids. Such notice shall state the time and place for opening of the Bids. Where applicable, ECMCC must also publish notice of the IFB in the Contract Reporter in accordance with Section IV.A.
4. Bid Acceptance and Evaluation. Timely Bids will be unconditionally accepted and evaluated for responsiveness based on the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, quality, workmanship, delivery and suitability for a particular purpose.
5. Correction or Withdrawal of Bids; Cancellation of Awards. ECMCC may permit, where appropriate, the withdrawal of inadvertently erroneous Bids before or after award, or cancellation of awards or Contracts based on such Bid mistakes. After

Bid opening, no changes to Bid prices or other provisions of Bids prejudicial to the interest of ECMCC or fair competition shall be permitted.

6. Award. A Contract will be awarded after all necessary approvals have been obtained by written notice to the lowest responsible and responsive bidder (or bidders, in the case of multiple awards) whose Bid meets the requirements and criteria set forth in the IFB.
7. Bid Retention. All Bids received, including all related documentation and communications received from bidders during the bidding process, will be maintained in a Procurement record by ECMCC for twelve (12) months.

D. Request for Proposal.

1. Conditions for Use. A Contract may be solicited through an RFP rather than an IFB if the estimated amount of Procurement exceeds \$20,000 for supplies and services or \$35,000 for public construction projects (see Section III.D Small Purchases), and factors other than price are critical to the Procurement (such as specialized skills or equipment) and none of the exemptions described in Section III.F (Waiver of Formal Competition) are applicable. An RFP might be used for the Procurement of Personal Services or the Procurement of biotechnology, electronic, software and system applications.
2. Request for Proposal. ECMCC will issue an RFP, which shall include a statement of work and/or Specifications, and the contractual terms and conditions applicable to the Procurement.
3. Public Notice. ECMCC shall, if applicable, publish notice of the IFB in the Contract Reporter in accordance with Section IV.A. ECMCC may also publish notice of the RFP in a newspaper or other publication for purposes of soliciting participation as determined by the Director of Purchasing.
4. Evaluation. Where the basis for award is the Best Value offer, the Procurement Record shall include a determination of the evaluation criteria in advance of the initial receipt of offers, which whenever possible, shall be quantifiable, the process to be used in the determination of Best Value and the manner in which the evaluation process and selection shall be conducted. The RFP shall set forth criteria stating the relative importance of each evaluation factor to the Procurement, including price, to be used by ECMCC during the evaluation period.
5. Negotiations with Responsible Offeror and Revisions to Proposals. As provided in the RFP, a selection committee may conduct negotiations with responsible offerors who timely submit Proposals determined to be reasonably qualified to be selected for award. The purpose of negotiations will be to seek the best value for ECMCC and to clarify for and advise offerors of the deficiencies in both the technical and price aspects of their Proposals so as to assure the full understanding of and conformance to the solicitation requirements. No offeror will be provided information about any other offeror's Proposal, and no offeror will be assisted in bringing its Proposal up to the level of any other Proposal. Offerors will not be directed to reduce their Proposal prices to a specified amount in order to be

considered for award. A common deadline will be established for receipt of Proposal revisions and communicated to responsible offerors..

6. Award. After evaluation of Proposal revisions, if any, award will be made to the responsible offeror (or offerors, in the case of multiple awards) whose Proposal is determined to be the most advantageous to ECMCC taking into consideration price and the evaluation factors set forth in the RFP.
7. Documentation of Award. If an award is made to an offeror who is not the lowest bidder, ECMCC shall document the factors taken into consideration, and findings indicating the requirements of ECMCC are met by the award. Such documentation shall be maintained in the Procurement Record.
8. Proposal Retention. All Proposals received, including all related documentation and communications received from offerors during the selection process, will be maintained by ECMCC for twelve (12) months.

E. Discretionary Procurements. For purchases up to the discretionary Procurement thresholds set forth below, ECMCC shall not be required to conduct formal competitive bidding processes. With respect to any discretionary Procurement, ECMCC must (i) ensure that the goods, services or technology acquired meet ECMCC's 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 vendor is a responsible vendor. Reasonableness of price may be determined by obtaining three (3) alternate quotes or comparing the proposed price to prices paid for similar goods or services within the previous six (6) months.

1. Supplies and Services under \$20,000. Any Procurement of goods and services, including Professional Services, with a Contract Value that does not exceed \$20,000 including all renewal options may be made without a competitive bidding process; provided, however, that reasonable efforts shall be made to ensure that the price to be paid is reasonable. Reasonableness of price may be determined by obtaining alternate quotes or comparing the proposed price to prices paid for similar goods or services within the previous twelve (12) months. The Procurement requirements shall not be artificially divided so as to constitute a discretionary Procurement under this Section.
2. Public Works under \$35,000. Any construction project with a total Contract Value that does not exceed \$35,000 may be awarded without a competitive bidding process; provided, however, that reasonable efforts shall be made to ensure that the price paid is reasonable. Reasonableness of price may be determined by obtaining alternate quotes or comparing the proposed Contract Value to prices paid for similar work performed within the previous twelve (12) months. A construction project may not be divided into more than one project so as to constitute a discretionary Procurement under this Section.
3. M/WBE Goods and Services under \$200,000. Any Procurement Contract for goods or services, with a Contract Value that does not exceed \$200,000 including all renewal options, may be awarded to an M/WBE without a competitive bidding process, provided that the price for the goods or services is determined to be

reasonable in accordance with the M/WBE Policy. The Procurement requirements shall not be artificially divided so as to constitute a discretionary Procurement under this Section. Where the Contract Value exceeds \$50,000, the Contract award, and if applicable, the mini-bid directed to M/WBE firms, must be advertised in the New York State Contract Reporter in accordance with Section IV.A.

4. Small Business Goods and Services under \$200,000. Any Procurement Contract for goods or services with a Contract Value that does not exceed \$200,000, including all renewal options, may be awarded to a Small Business without a competitive bidding process, provided that the price for the goods or services is determined to be reasonable. For purposes of determining reasonableness of price, the same process set forth in the M/WBE Policy shall apply to Small Business discretionary awards. The Procurement requirements shall not be artificially divided so as to constitute a discretionary Procurement under this Section III.G. Where the Contract Value exceeds \$50,000, the Contract award and, if applicable, the solicitation directed to Small Businesses, must be advertised in the New York State Contract Reporter in accordance with Section IV.A.
5. Recycled or Remanufactured Goods or Services Under \$200,000. Any Procurement Contract for recycled or manufactured commodities or services, with a Contract Value that does not exceed \$200,000 including all renewal options, may be awarded without a competitive bidding process, provided that the price for the commodities or services is determined to be reasonable. For purposes of determining reasonableness of price, the same process set forth in the M/WBE Policy shall apply to Recycled or Remanufactured discretionary awards. The Procurement requirements shall not be artificially divided so as to qualify for this discretionary exception. Where the Contract Award exceeds \$50,000, the Contract award and, if applicable, the solicitation directed to recycled or remanufactured commodity or service offerors, must be advertised in the New York State Contract Reporter in accordance with Section IV.A.

F. Medical Projects.

1. Source Selection. ECMCC may award Contracts for Medical Projects to Project Developers on the basis of factors other than cost alone, including but not limited to, facility design, system reliability, efficiency, safety and compatibility with other elements of patient care. Notwithstanding any contrary provisions of law, a Contract for a Medical Project with a Project Developer may be awarded pursuant to the competitive bidding process outlined in Section III.C (Invitation for Bid) or pursuant to the Proposal evaluation process outlined in Section III.D (Request for Proposal).
2. Public Notice. When an RFP is issued for a Medical Project, ECMCC shall publish notice of such issuance in at least one (1) newspaper of general circulation in the County. Concurrent with the publication of such notice, a draft RFP shall be filed with the County commissioner of health.
3. Board Resolution. If after issuance of an RFP for a Medical Project, a Contract is awarded to a Project Developer who is not the lowest bidder, ECMCC shall adopt

a resolution containing particularized findings indicating that the requirements of ECMCC are met by the award and that such award is in the public's best interest.

4. Project Cost over \$500,000. Where a Medical Project expected to cost more than \$500,000 involves the construction of a Medical Building, ECMCC's Contract with the Project Developer shall provide that the Medical Building shall be constructed through Contracts awarded through the competitive bidding process outlined in Section III.C (Invitation for Bid) and shall require separate and independent competitive bidding in each of the following subdivisions:
 - (a) plumbing and gas fitting;
 - (b) steam heating, hot water heating, ventilating and air conditioning apparatus; and
 - (c) electric wiring and standard illuminating fixtures.
5. Bid Security. Where a Medical Project expected to cost more than \$500,000 involves the construction of a Medical Building, the Project Developer or the Project Developer's construction subcontractors shall furnish bid security as provided in Section V.A(1).

G. Exemptions from Formal Competition.

The following types of Procurements are exempt from the competitive bidding process and may be awarded by ECMCC without issuance of a formal IFB, provided however that exemption from competitive bidding shall not exempt the Procurement from applicable M/WBE participation requirements set forth in the M/WBE Policy or Contract Reporter publication requirements set forth in Section IV.A:

1. Professional Services. Where the Contract Value of a Procurement for Professional Services exceeds Twenty Thousand Dollars (\$20,000) but does not exceed Two Hundred Thousand Dollars (\$200,000), and the issuance of an RFP is impractical due to the nature or scope of the services to be provided or the pricing structure for the services to be provided, such Professional Services may be procured through the solicitation of price quotations from no less than three (3) offerors. Such quotations must be obtained in writing. Award will be made to the offeror providing the Best Value to ECMCC based on an evaluation of the price and other specified factors. If factors other than price are utilized in the evaluation of the quotes, such factors shall be disclosed to all offerors at the time the price quotation is solicited. The names, addresses and/or telephone numbers of the offerors and persons contacted, along with the date and amount of each quotation shall be recorded and maintained in the Procurement Record. Any award of a Contract under this Section III.G(1) shall comply with ECMCC's M/WBE policies and procedures and the Contractor Reporter publication requirements set forth in Section IV.A.
2. Additional Items under Existing Contract. Where the need for additional items or services arises under an existing Contract awarded pursuant to an IFB or RFP, such Procurement may be made without issuing a new IFB or RFP, provided that the

additional items or services were contemplated under the original IFB or RFP, are provided within eighteen (18) months of the original RFP or IFB and the quantity of additional items or services does not exceed thirty (30%) percent of the quantity of items or services procured under the original Contract. All communications and documentation related to the Procurement of additional items or services will be maintained in the Procurement Record. For avoidance of doubt, this Section shall not apply to any discretionary Procurements to the extent that the additional items or services would cause the Contract Value to exceed the discretionary Procurement threshold. To the extent that the additional items or services impact the Contract Value, and the Contract is subject to M/WBE goals, ECMCC shall require the Contractor to submit an updated M/WBE Utilization Plan in accordance with the M/WBE Policy.

3. Standardization. For reasons of efficiency or economy, purchase Contracts for equipment, material, supplies or services may be standardized to a particular make, model or brand upon the approval by at least three-fifths of the members of the Board of Directors of ECMCC. The resolution adopted by the Board shall specify the reasons that standardization is appropriate. A common reason for standardization is to ensure that equipment purchased is compatible with existing equipment or spare parts. For such purchases to be justified, the original equipment should be suitable for the required purpose, the price should be reasonable when compared to the overall cost, and the advantages of another make or source of equipment shall have been considered and rejected on grounds acceptable to ECMCC. After a resolution is adopted, ECMCC may specify the standardized make, model or brand in specification document, however all competitive processes set forth in these Guidelines must still be followed.
4. Sole Source. When ECMCC determines that there is only one source for required goods or services, and no other vendor offers functionally equivalent goods or services in the marketplace, a Procurement Contract for such goods or services may be awarded without competitive procedures, provided that a Sole Source Justification Form is completed by the Department initiating the Procurement and approved by the Director of Purchasing, Counsel, and ECMCC's CEO or CFO. Sole source Procurements with Contract Values exceeding applicable M/WBE thresholds shall comply with the M/WBE Policy. Sole source Procurements with Contract Values exceeding \$50,000 shall be advertised in the Contract Reporter in accordance with Section IV.A.
5. Single Source. Where ECMCC determines that required goods or services are available from two or more vendors, but a particular vendor is preferable because of specific factors described in this Section, a Procurement Contract may be awarded to a particular vendor provided that a Single Source Justification Form is completed by the Department initiating the Procurement and approved by the Director of Purchasing, Counsel and ECMCC's CEO or CFO. Factors supporting a single source award are: (i) legislation or appropriation mandates use of particular vendor; (ii) warranty voided if service or parts are provided by a different vendor; (iii) software license renewals, additions, or upgrades available from only one source, or (iv) other proprietary circumstances as may be identified in the Single Source Justification Form, as may be amended. Single source Procurements with Contract Values exceeding applicable M/WBE thresholds shall comply with

the M/WBE Policy. Single source Procurements with Contract Values exceeding \$50,000 shall be advertised in the Contract Reporter in accordance with Section IV.A.

6. Emergency Procurement. Notwithstanding any other provision of these Guidelines, ECMCC may make or authorize others to make an emergency Procurement in the event of an immediate threat to public health, welfare or safety, or to prevent or minimize serious disruption of ECMCC services jeopardizing patient health, welfare or safety; subject to the following provisions:
 - (a) The emergency Procurement shall be limited to those supplies, services or construction items necessary to meet the immediate emergency;
 - (b) Whenever practicable, approval of the CEO shall be obtained prior to the Procurement;
 - (c) Emergency Procurements shall be made with such competition as is practicable under the circumstances;
 - (d) The official responsible for the Procurement shall submit to the Board of Directors a written determination of the basis for the emergency and for the selection of the particular Contractor within three (3) business days of the initial action and the Board shall ratify the Emergency Procurement.

7. Joint Hospital Purchases. ECMCC may participate in a joint purchasing agreement for the Procurement of goods, supplies and services with one or more other municipal, state, federal or privately-owned hospital or other health related facility or medical school that receives public funding without competitive bidding. Such cooperative or joint purchasing may include, but is not limited to, multi-party contracts between public Procurement units and open-ended public Procurement unit contracts that are made available to other entities.

8. Group Purchasing Organizations. ECMCC recognizes purchases made through Group Purchasing Organizations as a best practice in hospital purchasing nationwide with associated efficiencies, savings and speed. ECMCC may participate in one or more group purchasing organizations (GPO). Procurements made pursuant to a GPO arrangement shall not be subject to competitive bidding processes.

9. Surplus and Second-Hand. Surplus and second-hand supplies, equipment and materials purchased from the federal government, New York State, or any other political subdivision, district or public benefit corporation are not subject to the competitive bidding process.

10. Recycled Products. Recycled products may be purchased without regard to the competitive Bid process so long as they meet the specified requirements and are reasonably competitive. Reasonably competitive shall mean that the cost of the recycled product does not exceed a cost premium of 10% above a comparable non-recycled product.

11. Government Sources. ECMCC may purchase from the New York State Office of General Services when the purchase exceeds \$500, or it may make purchases from the federal government or other political subdivision, without regard to the competitive Bid process. However, when ECMCC elects to use a government source for the purchase of goods or services, no purchase may be made where a Bid for such good or service has been received, unless the purchase may be entered into upon the same terms, conditions, and Specifications and represent a cost savings to ECMCC.
12. Board Waiver of Requirements for Competitive Selection of Contractors. Pursuant to Public Authorities Law Section 2879(3)(b)(i), the ECMCC Board may, by resolution, waive requirements for the competitive selection of contractors for a specific procurement that otherwise would be awarded on a competitive basis when such waiver is in the best interest of ECMCC. Accordingly, the Board of Directors may, upon careful deliberation and a vote of 2/3 of the Directors present at a meeting of the Board at which such Contract is presented, waive the selection of contractors on a competitive basis when doing so is in the best interest of ECMCC.
13. Professional Health Care Services. Contracts for professional health care services including but not limited to services performed by health care agencies or entities, physicians, dentists, physician's assistants, home health and personal care aides, occupational, speech, respiratory and physical therapists, nurses, nurses' assistants, medical and laboratory technicians, diagnosticians, social workers, psychiatric workers, veterinarians, and persons who provide care, treatment, counseling, case management, rehabilitative or preventative services to the mentally ill, developmentally disabled and those suffering from the disease of alcoholism or substance abuse are exempt from competitive bidding.

H. Pre-qualification/Request for Qualifications.

Prospective suppliers may be pre-qualified for particular types of supplies, services or construction. Such pre-qualification, however, is subject to subsequent review and does not necessarily constitute a finding of responsibility for any particular contract award nor does it guarantee an amount to be awarded. Notice of the Request for Qualifications shall be published at least annually in a newspaper of general circulation, and shall be published in the New York State Contract Reporter, similar to an IFB/RFP. The pre-qualified vendor list generated by the Request for Qualifications shall not contain less than five (5) bidders and must remain open for additional qualified bidders. Prequalification of bidders does not constitute competitive bidding. An IFB or RFP must still be used to determine how a particular Procurement will be awarded.

I. Minority and Women-Owned Business Enterprises.

It is the goal of ECMCC to (a) promote and assist participation of M/WBEs in competition for Procurement contracts; (b) award a fair share of Procurement contracts to such enterprises; and (c) award Contracts to those contractors who evidence compliance with the laws of New York prohibiting discrimination in employment. To achieve this goal, ECMCC shall use its best efforts to give M/WBEs an opportunity to compete for ECMCC business by soliciting or requesting offers from M/WBEs known to have experience in the

type of goods or services needed. ECMCC shall consult any list maintained by any State agency or department known to ECMCC that identifies M/WBEs by area of expertise.

All Procurements of supplies and services with an estimated cost in excess of \$25,000 and all Procurements for public construction projects with an estimated cost in excess of \$100,000 shall comply with ECMCC's M/WBE Participation Policy.

J. New York State Business Enterprises.

It is the goal of ECMCC to promote the participation of New York State Business Enterprises and New York State Residents in Procurement Contracts. Accordingly, ECMCC all Procurements shall comply with ECMCC's New York State Business Enterprise Participation Policy.

IV. PROCEDURES and STANDARD PROVISIONS

A. New York State Contract Reporter. All Procurements (other than joint purchases and contracts for health care services) of goods, services or public works having a Contract Value of Fifty Thousand Dollars (\$50,000) or more shall be published in the New York Stat Contract Reporter (except as provided below).

1. Notice of Procurement. For all Procurement Contracts with a Contract value equal to or greater than \$50,000 ECMCC will, prior to issuing an IFB or RFP, submit the following information to the Commissioner of the Department of Economic Development to be included on the New York State Contract Reporter website, (www.nyscr.ny.gov): (a) ECMCC's name and address; (b) the IFB or RFP number; (c) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (d) the address where bids or proposals are to be submitted; (e) the due date for Bids or Proposals; (6) a description of any eligibility or qualification requirements or preferences; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture or coproduction arrangement; (8) any other information deemed useful to potential contractors; (9) the name, address, and phone number of the person to be contacted for additional information and (10) a statement as to whether the goods and/or services sought have, in the immediately preceding three-year period, been supplied by a Foreign Business Enterprise. The notice of Procurement opportunity shall appear in the NYSCR at least fifteen (15) business days prior to the Bid or Proposal due date.

2. Notice of Contract Award. At the time a determination of intent to award a Procurement Contract is made, the following information shall be submitted for publication in NYSCR:

- (a) For Procurement Contracts obtained through IFB, the result of the Bid opening including the names of bidding firms and the amounts bid by each;
- (b) For Procurement Contracts obtained through RFP or quote solicitation, the names of vendors submitting Proposals or quotes

and the vendor submitting the selected Best Value Proposal or quote.

- (c) For all other Procurement Contracts (including Procurement Contracts with a value of \$50,000 or more awarded on a sole source or single source basis, including such Contracts not exceeding \$200,000 awarded to Small Businesses or M/WBE firms, or for the purchase of goods and/or technology that are recycled or remanufactured, and certain other Procurement Contracts exempt from the general advertising requirement for procurement contract bidding opportunities), the name of the proposed awardee.

- 3. Exemptions. This Section IV.A shall not apply (a) under emergency Procurement or exigency conditions where advance publication has been waived by the Board, (c) if the Procurement is being resolicited within forty-five (45) business days after the date Bids or Proposals were originally due, or (d) to Procurement Contracts awarded to not-for-profit human services providers.

B. Cancellation of Invitation for Bid or Request for Proposal.

An IFB, RFP or other solicitation may be canceled, or any or all Bids or Proposals may be rejected in whole or in part as may be specified in the solicitation or otherwise, when it is in the best interest of ECMCC. The reasons for the cancellation or rejection shall be made part of the Procurement record.

C. Responsibility of Bidders and Offeror.

- 1. Standards. Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:
 - (a) Available the appropriate financial, material, equipment, facility and/or personnel resources and expertise, or the ability to obtain them, necessary to indicate its ability to meet all contractual requirements;
 - (b) A satisfactory record of performance with projects of a similar size and nature;
 - (c) A satisfactory record of integrity;
 - (d) History of contracting with ECMCC;
 - (e) Qualified legally to contract with ECMCC; and
 - (f) Promptly supplied all necessary information in connection with the inquiry concerning responsibility.
- 2. Written Determination of Non-Responsibility Required. If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, ECMCC shall issue a written determination of non-responsibility setting forth the basis of the finding as specified in Section III.C.7.
- 3. Compliance with Procurement Lobbying Law. In accordance with ECMCC's Procurement Disclosure Policy (Exhibit C), bidders and offerors are required to disclose prior violations of the Procurement Lobbying Law and certify compliance with ECMCC's Procurement Disclosure Policy. ECMCC shall investigate any

report of violation of the Procurement Disclosure Policy. Failure to comply with the Procurement Disclosure Policy may result in the disqualification of a Contractor from future Procurement opportunities.

D. Vendor Preparation of Technology Specifications. If a vendor prepares and furnishes specifications for a technology Procurement proposal, to be used in a competitive Procurement, such vendor shall not be permitted to bid or propose on such Procurement, either as a prime vendor or as a subcontractor. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services. Such restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a Procurement proposal;
3. A vendor has furnished at ECMCC's request specifications or information regarding a product or service they provide, but such vendor has not been directly requested to write specifications for such product or service or an ECMCC technology procurement proposal; or

D. Contract Provisions.

1. All Contracts for Personal Services shall detail the scope of services to be performed and the time frame for performance, the monitoring or reviewing of that performance by ECMCC personnel and, where appropriate, any permitted use of supplies, facilities or personnel.

1. Such contracts also shall state the compensation for the services, the timing of payment, the preconditions for receiving payment from ECMCC, procedures for termination of the contract and any other provisions counsel deems necessary or appropriate for each particular contract. If the performance of any contract permits or requires the use of subcontractors, the Contract shall require the Contractor to act affirmatively to secure such participation by M/WBEs and to report the nature and extent of such efforts to ECMCC in accordance with predetermined ECMCC participation goals.

2. All Contracts awarded through one of the competitive Bid processes also must include the following non-collusive bidding certification language:

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

- (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

E. Contract Review and Approval.

1. General Counsel. All contracts and amendments to contracts must be reviewed and approved by ECMCC's General Counsel, with the exception of renewals or extensions to existing contracts upon the same terms and conditions previously reviewed and approved by the General Counsel. General Counsel may designate an attorney member of the Office of General Counsel to perform review in any particular instance.
2. Board Approval of Non-Budgeted Contracts. Any Contract with a Contract Value in excess of \$500,000 that does not appear in the budget must be approved by the Board of Directors.
 1. Board Approval and Annual Review of Certain Contracts for Services. In accordance with Public Authorities Law Section 2879, any Procurement Contract for services with an actual or anticipated term of more than one (1) year must be approved by and annually reviewed by the Board of Directors.
 2. Signing Authority. The CEO, CFO and President are the only persons authorized to sign Contracts on behalf of ECMCC.

F. ECMCC Reserved Rights. The following statement of reserved rights shall be incorporated in all RFPs and IFBs.

ECMCC reserves the right to:

1. Reject any or all Proposals received in response to the IFB/RFP;
2. Withdraw the IFB/RFP at any time, in ECMCC's sole discretion;
3. Make an award under the IFB/RFP in whole or in part; *
4. Disqualify any bidder whose conduct and/or Proposal fails to conform to the requirements of the IFB/RFP;
5. Seek clarifications and revisions of Proposals; *
6. Use Proposal information obtained through site visits, management interviews and ECMCC's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to ECMCC's request for clarifying information in the course of evaluation and/or selection under the IFB/RFP;
7. Prior to the Bid opening, amend the IFB/RFP Specifications to correct errors or oversights, or to supply additional information, as it becomes available;

8. Prior the Bid opening, direct bidders to submit Proposal modifications addressing subsequent IFB/RFP amendments;
9. Eliminate any mandatory, non-material Specifications that cannot be complied with by all of the prospective bidders;
10. Waive any requirements that are not material;
11. Negotiate with the successful bidder within the scope of the IFB/RFP in the best interests of ECMCC;
12. Conduct contract negotiations with the next responsible bidder, should ECMCC be unsuccessful in negotiating with the selected bidder;
13. Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an offeror's Proposal and/or to determine an offeror's compliance with the requirements of the solicitation. *

**Note: Failure to include these specific reserved rights (marked with an asterisk) in the solicitation precludes their use in that Procurement.*

V. **BOND REQUIREMENT**

A. **Bid Security.**

1. **Requirement for Bid Security on Construction Contracts.** Bid security shall be required for Contracts involving the construction of a Medical Building when the cost is estimated to exceed \$500,000. Bid security shall be in the form of a bond from the Project Developer or the Project Developer's construction subcontractor guaranteeing prompt payment when due to all persons furnishing labor and materials. Such bond shall be provided by a surety company authorized to do business in New York, or the equivalent in cash or otherwise supplied in a form satisfactory to ECMCC. Nothing herein prevents the requirement of such bonds on other construction Contracts or Contracts valued under \$500,000 when the circumstances warrant.
2. **Bid Security on Supply or Services Contracts.** Bid security may be required for supply or service contracts, as ECMCC deems necessary to protect ECMCC's interests. Any security requirements shall be set forth in the solicitation. Bid security shall be a bond provided by a surety company authorized to do business in New York or the equivalent in cash or otherwise supplied in a form satisfactory to ECMCC. Bid security shall not be used as a substitute for a determination of a bidder or offeror's responsibility.
3. **Rejection of Solicitations for Noncompliance with Bid Security Requirements.** When the solicitation requires security, noncompliance requires that the Bid or Proposal be rejected unless otherwise waived by ECMCC pursuant to these Guidelines.

B. **Other Forms of Security on Construction Contracts.**

ECMCC may require other forms of security to assure timely, faithful and uninterrupted performance, including, but not limited to, operations period surety bonds, letters of credit, and appropriate written guarantees from the Contractor.

VI. ETHICS

A. **Definitions.**

1. Direct and Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or Procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
2. Employee. Any individual drawing a salary from ECMCC or any non-compensated individual performing services for ECMCC.
3. Relative. An individual residing in the same household as the ECMCC employee and any individual who is a direct descendent of the employee's grandparents or the spouse of such descendent..

B. **Conflict of Interest.**

1. Conflict of Interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a Procurement when the employee knows that:
 - (a) The employee or a relative of the employee has a financial interest pertaining to the Procurement;
 - (b) A business or organization in which the employee or relative is involved has a financial interest pertaining to the Procurement;
 - (c) Any other person, business, or organization with whom the employee or relative is negotiating or has an arrangement concerning prospective employment is involved in the Procurement.

C. **Kickbacks.**

It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor, higher tier subcontractor or any person associated therewith, or a relative of such contractors or subcontractors, as an inducement for the award of a subcontract or order.

D. **Procurement Disclosure Policy.**

ECMCC, its officers, agents and representatives shall comply with State Finance Law Sections 139-j and 139-k and ECMCC's Procurement Disclosure Policy with respect to all Procurements with an estimated annualized expenditure of \$15,000.

VI. PROCUREMENT CONTRACT REPORTING

ECMCC shall prepare and publish reports on procurement activities in accordance with applicable law.

EXHIBIT A

| GOODS AND SERVICES | | |
|---|---|----------------------|
| | Yes | No |
| 1. Contract Value \$20,000 + | Go to Step 2. | No IFB/RFP required. |
| 2. <u>Waiver Exception</u> <ul style="list-style-type: none"> • Discretionary Procurement • Professional Services under \$200k • Add'l Item Under Existing Contract • Sole Source • Single Source • Emergency • Joint Hospital Purchase • GPO/State Contract • Surplus/Second Hand • Recycled Product • Government Source • Board Waiver • Professional Health Care Services | No IFB/RFP required. Solicit quotes where applicable. <i>Over \$1 million: State Comptroller 90 day prior approval may be required. Consult ECMCC legal counsel.</i> | Go to Step 3. |
| 3. Factors Other than Price Critical | RFP - Go to Step 4. | IFB - Go to Step 4. |
| 4. Contract Value \$25,000 + | Include M/WBE | M/WBE not required. |

| PUBLIC WORKS/CONSTRUCTION | | |
|---|---|----------------------|
| | Yes | No |
| 1. Aggregate Cost \$35,000 + | Go to Step 2. | No IFB/RFP required. |
| 2. <u>Waiver Exception</u> <ul style="list-style-type: none"> • Discretionary Procurement • Professional Services under \$200k • Add'l Item Under Existing Contract • Sole Source • Single Source • Emergency • Joint Hospital Purchase • GPO/State Contract • Surplus/Second Hand • Recycled Product • Government Source • Board Waiver • Professional Health Care Services | No IFB/RFP required. Solicit quotes where applicable. <i>Over \$1 million: State Comptroller 90 day prior approval may be required. Consult ECMCC legal counsel.</i> | Go to Step 3. |
| 3. Factors Other than Price Critical or Medical Project | RFP - Go to Step 4. | IFB - Go to Step 4. |
| 4. Aggregate Cost \$100,000 + | Include M/WBE. | M/WBE not required. |

| | | | |
|----|----------------------------|---|--------------------|
| | | Go to Step 5. | Go to Step 5. |
| 5. | Aggregate Cost \$500,000 + | <ul style="list-style-type: none"> • IFB required. • Separate bids: <ul style="list-style-type: none"> ○ Plumbing/Gas ○ HVAC ○ Electrical • Bid Security required. | No further action. |

EXHIBIT B

| IFB | RFP |
|--|---|
| 1. Coordinate process through Purchasing | 1. Coordinate process through Purchasing |
| 2. Draft IFB to legal counsel for approval | 2. Draft RFP to legal counsel for approval |
| 3. Publish 15 business days prior to deadline in NYSCR; publish 5 days prior to deadline in newspaper | 3. If Medical Project: Publish 1 day upon issuance |
| 4. Acceptance and evaluation | 4. If Medical Project: File w/ County Commissioner of Health |
| 5. Award | 5. Evaluation |
| 6. Retain for IFB documents for 12 months | 6. Negotiation |
| 7. Contract reviewed and approved by legal counsel | 7. Award |
| 8. Board Approval required if in excess of \$500,000 and not in annual budget or if a services agreement for term of over 1 year | 8. Document factors if not awarded to the lowest respondent |
| 9. Contract executed by CEO, CFO or President | 9. Retain RFP documents 12 months |
| 10. Report of new contracts submitted to Board monthly | 10. Contract reviewed and approved by legal counsel |
| | 11. Board Approval required if in excess of \$500,000 and not in annual budget or if a services agreement for term of over 1 year |
| | 12. Contract executed by CEO, CFO or President |
| | 13. Report of new contracts submitted to Board monthly |