



# Erie Co. Fiscal Stability Authority



## ERIE COUNTY FISCAL STABILITY AUTHORITY GUIDELINES REGARDING THE USE, AWARDING, MONITORING AND REPORTING OF PROCUREMENT CONTRACTS

Effective March 31, 2020

### ARTICLE I

#### STATEMENT OF PURPOSE

Section 101. These Erie County Fiscal Stability Authority Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts ("Guidelines") are adopted pursuant to the provisions of the Act and Section 2879 of the Public Authorities Law and shall be reviewed and approved by a quorum of the Authority's Directors at least annually.

### ARTICLE II

#### DEFINITION OF TERMS

Section 201. Definitions. The following terms shall, for purposes of these Guidelines, have the following meanings unless the context shall clearly indicate some other meaning:

"Act" shall mean Chapter 182 of the Laws of 2005, as amended or supplemented.

"Authority" or "ECFSA" shall mean the Erie County Fiscal Stability Authority.

"Officer" shall mean any person so designated by the Directors of the Authority.

"Procurement Contract" or "Contract" means any written agreement of the Authority for the acquisition of goods or services of any kind in the actual or estimated amount of \$15,000, or more.

### ARTICLE III

#### TYPES OF SERVICES FOR PROCUREMENT

Section 301. The areas of responsibility and oversight requiring Procurement Contracts for personal services include, but are not limited to the performance of legal, accounting, management consulting, investment, banking, planning, training, statistical, research, public relations, architectural, engineering, construction, surveying, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of ECFSA

("Personal Service(s)").

The reasons for use of Procurement Contracts for Personal Service include, but are not limited to:

- a. Requirements of special expertise or unusual qualifications;
- b. Nature, magnitude complexity of services required;
- c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- d. Lower cost;
- e. Short term need for the services;
- f. Infrequent need for the services; and
- g. Distance of the location or locations where the services must be performed from the Authority offices or facilities.

#### Section 302. Procurement Contracts for Goods

The types of goods requiring Procurement Contracts include:

- a. Goods needed in order to proceed with a project of ECFSA; and
- b. Goods needed in order to support the administrative needs of ECFSA.

### ARTICLE IV

#### SELECTION OF PERSONAL SERVICE CONTRACTORS

Section 401. Selection Criteria. Except as specifically waived in accordance with the provisions of these Guidelines, the Act, State law, rules or regulations, Procurement Contracts shall be awarded as follows:

1. General Policy

Procurement Contracts are to be awarded to persons/firms on a competitive basis to the maximum extent possible.

- a. Such awards are to be made after notice is published in the New York State Contract Reporter and after the solicitation of proposals obtained from at least three qualified persons/firms.
- b. Such ECFSA requests for proposals shall be preceded, where possible, by the preparation of reasonable cost estimates for such Contracts. Such cost estimates shall be the responsibility of the ECFSA staff members initiating such requests for proposals.
- c. All proposals should be received at one designated location within the initiating department, and immediately should be stamped with the date and time of receipt.
- d. When appropriate, written selection criteria shall be prepared for each Contract, which shall include price as an important factor to be considered in the selection process. Analysis of the proposals and/or bids submitted, and the award of the Contract shall be documented in reasonable detail. Awards to other than the low bidder shall include in such documentation the reason the low bidder was not selected.
- e. The initiator shall ensure that documentation related to proposals and/or bids and awards are maintained for not less than two years after completion of the services contracted for.

Section 402. Advertisement Requirements. The solicitation of bids, proposals or submissions of qualification data for Personal Service contracts shall be made by the Authority in a manner determined by an authorized Officer of the Authority to be the most cost effective for providing reasonable competition for the Authority's Personal Service contracts while also promoting State business enterprises where possible, practical, feasible and consistent with open bidding. This may include advertisement in appropriate newspapers or trade journals, direct mailings to firms considered qualified and such other outreach mechanisms as are consistent with the policy of these Guidelines and as directed in section 2879 of the Public Authorities Law. Notice of Procurement Contracts opportunities must also be advertised in the State's New York State Contract Reporter

Section 403. Term. All contracts for Personal Services shall be limited to a maximum of one year unless the Authority Directors by resolution determine that a longer period for a particular contract is in the best interest of the Authority. Contracts for legal services and financial advice services shall not be longer than five years, including the initial contract period and any contract extensions approved by the Directors of the Authority.

Section 404. Waiver of Selection Criteria. Procurement Contracts may be awarded without notice being published in the New York State Contract Reporter to persons/firms on a sole source or single source basis only on the written approval of the Executive Director or the Directors of ECFSA. That approval will only be granted where the initiator can demonstrate:

- a. Emergency or other extraordinary circumstances exist which make competition impracticable or inappropriate; or

- b. Only one source for the goods or services is available; or
- c. Specialized services are required for which a certain person/firm's expertise is unique or such person/firm has greatly superior qualifications to perform the services at a cost that is determined to be fair and reasonable.

The initiator shall ensure that documentation related to the reason for awarding the contract on a sole source or single source basis and for not publishing notice in the New York State Contract Reporter is maintained for not less than two years after completion of the services contracted for.

Section 405. Approval Process the ECFSA Directors shall approve the award of all Procurement Contracts for Personnel Services, regardless of the amount of said contract.

## ARTICLE V

### SELECTION OF VENDORS AND SUPPLIERS FOR THE PURCHASE OF GOODS

Section 501. Except as provided by the Act, State law, rules or regulations, in the procurement of furniture, equipment, supplies and other goods for the Authority, the Authority shall perform the following tasks:

- a. Establish a realistic furniture, equipment and supplies budget.
- b. Place advertisements for goods and service in the same manner as described in 402 of these Guidelines.
- c. Perform a comparative pricing and cost analysis for each item needed, including prices of those items, which are available through the State Office of General Service contracts.
- d. Prepare contracts and/or purchase orders for the acquisition of all commodities. Use of State contracts is preferable when the items are available at lower costs.
- e. Monitor vendors for quality control and timely deliveries.
- f. Verify the quantities received and the quality of the products in light of the specifications and monitor the vendor invoices for timely payments.
- g. If the estimated cost of the goods exceeds \$15,000 or more, a competitive bidding procedure will be followed.

## **ARTICLE VI**

### **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION**

Section 601. The Authority shall, in order to promote the use of minority and women-owned enterprises in Procurement Contracts, solicit offers from minority and women-owned business enterprises known to have experience in the area of the goods or service to be provided, all in accordance with the ECFSA Act and State and Federal laws and regulations.

## **ARTICLE VII**

### **POLICIES TO PROMOTE THE PARTICIPATION BY NEW YORK BUSINESS ENTERPRISES AND NEW YORK STATE RESIDENTS IN PROCUREMENT CONTRACTS**

Section 701. The Authority shall comply with the Act and the State Omnibus Procurement Law when applicable.

## **ARTICLE VIII**

### **PROVISIONS MADE A PART OF SERVICE CONTRACTS**

Section 801. Provisions to be contained in Personal Service contracts shall include but not be limited to:

- a. Scope of services;
- b. Contract price or fee structure;
- c. Method or basis of payment;
- d. Use of the Authority's supplies;
- e. Use of the Authority's personnel
- f. Term of the contract; and
- g. The Authority's Schedule A, "Conditions Applicable to ECFSA Agreements with Law Firms and other Consultants" which Schedule is made a part of these Guidelines.

## **ARTICLE IX**

### **PROCUREMENT CONTRACTS WITH FORMER OFFICERS OR EMPLOYEES OF THE AUTHORITY**

Section 901. The Authority may not enter into Procurement Contracts with former Officers or employees of the Authority or former employees of New York State, who provided services to the Authority, where such Contracts would be in contravention of law, would create a conflict of interest or may create the appearance of impropriety.

## **ARTICLE X**

### **REPORTS TO THE DIRECTORS CONCERNING PROCUREMENT CONTRACTS**

Section 1001. The Authority shall annually prepare for approval by the Directors and public availability a report on Procurement Contracts as of the end of each fiscal year summarizing procurement activity by the Authority for the period of the report, including a listing of all Contracts entered into, the selection process used to select such Contractors and the status of existing Procurement Contracts. ECFSA's Executive Director shall also prepare, on an annual basis, a report for submission to:

- a. The Division of Budget;
- b. The Department of Audit and Control;
- c. The Senate Finance Committee;
- d. The Assembly Ways and Means Committee;
- e. The Department of Economic Development; and
- f. Members of the public (upon receipt of reasonable requests therefore),

which shall include the Guidelines, amendments thereto, and an explanation thereof.

## **ARTICLE XI**

### **ANNUAL REVIEW AND APPROVAL OF GUIDELINES**

Section 1101. The Directors shall annually review and approve these Guidelines.

## **ARTICLE XII**

### **AMENDMENT OF GUIDELINES**

Section 1201. The Authority may, from time to time, amend by resolution, these Guidelines.

## ARTICLE XIII

### EFFECT OF NONCOMPLIANCE WITH GUIDELINES

Section 1301. Failure by the Authority to comply with provisions of these Guidelines shall not be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement for the procurement of goods or services.

Attachment: Schedule A

### SCHEDULE A

#### CONDITIONS APPLICABLE TO ECFSA AGREEMENTS WITH LAW FIRMS AND OTHER CONSULTANTS (COLLECTIVELY, "CONSULTANT")

"ECFSA" IS THE ERIE COUNTY FISCAL STABILITY AUTHORITY

### ARTICLE I

#### RELATION OF CONSULTANT TO ECFSA

Section 101. Supervision By ECFSA. The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of ECFSA provided that neither ECFSA's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act pursuant to this Agreement.

Section 102. Consultant's Personnel. The Consultant shall designate in writing to ECFSA one individual, satisfactory to ECFSA, who shall be responsible for coordinating all of the services to be rendered by the Consultant and who shall be ECFSA's normal point of contact with the Consultant on matters relating to such services. Such individual shall be replaced upon ECFSA's written request.

Section 103. Approval of Subconsultants. The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of ECFSA. The Consultant shall inform ECFSA in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the proposed Subconsultant.

Section 104. Consultant as Independent Contractor. Notwithstanding any other provisions of this Agreement, the Consultant's status (and that of any Subconsultant)

shall be that of an independent contractor and not that of an agent or employee of ECFSA. Accordingly, neither the Consultant nor any Subconsultant shall hold itself out as or claim to be acting in the capacity of an employee, or agent of ECFSA.

Section 105. Conflict-of-Interest. The Consultant represents that:

(a) The Consultant has not now, and will not now, and will never acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder, any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of ECFSA, or any of its subsidiaries shall be admitted to any share or part hereof or to any benefit to arise here from.

(c) No officer, employee, agent or director of ECFSA, or any of its subsidiaries shall participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any officer, agent, director or employee of ECFSA, or any of its subsidiaries have any interest, direct or indirect, in this Agreement or the proceedings thereof.

## ARTICLE II

### DOCUMENTS AND RECORDS

Section 201. Maintenance of Records. The Consultant shall, until three years after completion of its services hereunder or termination of this Agreement by ECFSA, maintain and shall require each Subconsultant to maintain (a) complete and correct records of time spent by Consultant (and Subconsultant) in the performance of its obligations under this Agreement and (b) complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement, including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant (and Subconsultant) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant (and Subconsultant) in performing its obligations hereunder. Consultant shall make such books and records available to ECFSA or its authorized representatives for review and audit at all such reasonable times as ECFSA shall from time to time request. Consultant shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Consultant invoices in accordance with this Agreement.

Section 202. Ownership of Documents and Other Materials. All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Consultant under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of ECFSA, and ECFSA shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specification and other documents without payment of any additional royalty, charge or other compensation to Consultant. Upon



request of ECFSA during any stage of the work, Consultant shall deliver all such material to ECFSA.

The Consultant agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of ECFSA, except that Consultant may retain copies of such reports and other documents for general reference use.

### ARTICLE III

#### TERMINATION

Section 301. Optional Termination By ECFSA. ECFSA at anytime, in its sole discretion, may terminate this Agreement or postpone, delay, all or any part of the Agreement upon written notice to the Consultant. In the event of such termination, postponement, or delay, ECFSA shall pay the Consultant for reasonable professional time and out-of-pocket expenses incurred by Consultant to the date notice of such action is received by Consultant. The Consultant agrees to cause any agreement or contract entered by Consultant with any Subconsultant to provide for an optional termination by Consultant similar to the provision of this Section.

##### Impermissible Contracts

The ECFSA reserves the right to terminate this contract in the event it is found that the Affirmation filed by the Contractor stating that all information filed with the Authority with regard to prior non-responsibility determinations within the past 4 years based on impermissible contacts or other violations of New York State Finance Law section 139-j or based on the intentional provision of false or incomplete information to a government entity was intentionally false or intentionally incomplete. Upon such finding, the ECFSA exercise its termination right by providing written notification to the Offeror in accordance with the written notification terms of this contract. The Director of Administration and the Executive Director of the ECFSA shall make the determination that a contract is impermissible and exercise the contracts termination clause.

### ARTICLE IV

#### PROVISIONS REQUIRED BY LAW

Section 401. Consultant to Comply with Legal Requirements. The Consultant in performing its obligations and in preparing all documents required under this Agreement shall comply with all material applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

Section 402. Consultant to Obtain Permits, Etc. Except as otherwise instructed in writing by ECFSA, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations

and filings required to be obtained by ECFSA or the Consultant in connection with this Agreement.

Section 403. Non-Discrimination. The Consultant during the performance of this Agreement, specifically agrees that the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

Section 404. No Assignment Without Consent. The Consultant agrees that:

(a) It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of ECFSA;

(b) If the prohibition of Section 404(a) be violated, ECFSA may revoke and annul this Agreement and ECFSA shall be relieved from any and all liability and obligations thereunder to the Consultant and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Consultant and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

## ARTICLE V

### OTHER STANDARD PROVISIONS

Section 501. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

Section 502. Entire Agreement/Amendment. This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

Section 503. Confidentiality. Consultant hereby agrees that all data, recommendations, reports and other materials developed in the course of this study are strictly confidential between Consultant and ECFSA and Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from ECFSA, other than as required by law. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as ECFSA may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Consultant in connection with this study.

Section 504. Indemnification. Notwithstanding anything to the contrary contained herein, Consultant shall be responsible for all injuries to persons, including death, or damage to property sustained while performing or resulting from the work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or

default of Consultant or Subconsultants, or their employees, agents, servants, independent contractors or subcontractors retained by Consultant pursuant to this Agreement. Consultant agrees to defend, indemnify and hold the indemnities (the State of New York and ECFSA) harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage to property, if and to the extent the same results from any act, omission, negligence, fault or default of Consultant or its Subconsultants, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the indemnities by reason of claims against Consultant or its Subconsultants, or their employees, agents, servants, independent contractors and subcontracts for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the indemnities for reasonable attorneys' fees incurred in connection with the above. Consultant shall be solely responsible for the safety and protection of all its Subconsultants, or the employees, agents, servants, independent contractors, or subcontractors of Consultant or its Subconsultants, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Consultant, its Subconsultants, or their respective agents, employees, servants, independent contractors or subcontractors.

This Article shall survive the expiration or earlier termination of this Agreement.

Section 505. Miscellaneous. The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any part of the Agreement.

## ARTICLE VI

### BILLING POLICY

Section 601. Invoices. The Consultant is required to submit detailed documentation in support of Consultant's request for reimbursement. All invoices and their accompanying documentation must be forwarded to:

Accounts Payable Department  
Erie County Fiscal Stability Authority  
295 Main Street, Suite 946  
Buffalo, New York 14203

Invoices shall be made on the Consultants own invoice forms or letterhead and must include ECFSA's contract and project numbers, if any. Consultant shall also include federal identification number with their first invoice, and a list of each individual who is expected regularly to bill time to this matter, his/her title and hourly billing rate. Invoices shall be in the form attached to this Schedule A. Time shall be billed on a 1/10<sup>th</sup> of an hour basis.

Section 602. Reimbursable Expenses. Consultant's monthly invoices should present out-of-pocket expenses on a daily, itemized basis, grouped by general category. The Consultant must submit supporting documentation for each individual expense item over \$250.

Out-of-pocket expenses will be reimbursed only in accordance with the attached **SCHEDULE OF MAXIMUM REIMBURSEMENT ALLOWANCES FOR ECFSA AGREEMENTS WITH LAW FIRMS AND OTHER CONSULTANTS.**

Section 603. Non-Reimbursables. The following will not be reimbursed:

- a) Flight insurance
- b) Valet Services (except five or more consecutive days)
- c) Personal expenses of any type
- d) Expenses paid for ECFSA employees
- e) Travel to any ECFSA office to "deliver vouchers or pick up check".

Section 604 No Reimbursement For Sales Tax Charges. ECFSA is a public benefit corporation and as such is exempt from all sales and use taxes in New York State. ECFSA will not reimburse the Consultant for sales or use taxes over \$10.00 incurred in connection with the contract. If the Consultant will make purchases of goods or services that involve sales or use taxes in excess of that amount, the Consultant must, in advance of making such purchases, obtain a sales tax certification from ECFSA so that no such taxes are incurred.

Section 605. General.

- (a) All receipts must be legible. Illegible receipts will not be reimbursed.
- (b) Whenever possible original receipts should be presented for reimbursement.

At any time or times until three years after completion of Consultant's services or earlier termination of this Agreement by ECFSA, ECFSA may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher, which are found by ECFSA on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

[CONSULTANT LETTERHEAD]

Date  
Bill # \_\_\_\_\_  
ECFSA Contract No: \_\_\_\_\_

To: Erie County Fiscal Stability Authority  
Attention: General Counsel and Chief Financial Officer

Matter Name/No.: \_\_\_\_\_

**FOR PROFESSIONAL FEES**

<u>Date</u>	<u>Hours*</u>	<u>Fees**</u>	<u>Description of Services</u>
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- \* Billing on 1/10th of an hour.
- \*\* # of hours x the applicable rate.

**CHARGES AND DISBURSEMENTS (grouped by category):**

<u>Date</u>	<u>Description</u>	<u>Amount</u>
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TOTAL CHARGES AND DISBURSEMENTS \$

**TOTAL FOR FEES AND CHARGES AND DISBURSEMENTS: \$**

Certified as true and correct \_\_\_\_\_  
Vendor/Title

ECFSA internal approval \_\_\_\_\_

Name	Title	Date
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**SCHEDULE OF MAXIMUM REIMBURSEMENT ALLOWANCES FOR  
ECFSA AGREEMENTS WITH LAW FIRMS AND OTHER CONSULTANTS**

Consultant will be reimbursed for the following types of expenses at the following maximum rates. Reimbursable expenses must be billed currently and in any event within 60 days of being incurred:

<u>TYPE OF EXPENSE</u>	<u>RATE OF REIMBURSEMENT</u>
Secretarial	None (unless overtime)
Word Processing	None (unless overtime and then up to \$35/hr)
Local Telephone Expenses	None
Taxis or Private Cars	Actual cost up to \$65; amounts over \$50 must be submitted for approval on a case-by-case basis. Mileage reimbursement for private cars is \$.54/mile.
Meal Charges	Actual cost of evening or overtime meals in the office up to \$25 and reasonable cost of outside catering service for meetings. No reimbursements for breakfast or lunch.
Time Spent Preparing Bills	None
Long Distance Telephone	Actual cost
Photocopying	Firm's standard rate, up to \$.25/page; Actual cost if out-sourced.
Fax Transmission	None for incoming faxes; Firm's standard rate, up to \$1.00/page for outgoing faxes
Computer Research	Actual cost (no overhead) and only as needed and deemed cost effective.
Out-of-Town Travel	Reasonable expenses, to be submitted for approval, in advance, on a case-by-case basis.
Postage and Overnight Mail	None for individual letters; FedEx and other special delivery services will be reimbursed at actual cost
Messenger Service	Actual cost up to \$25.