

Resolution 24-5

Finger Lakes Regional Land Bank Corporation Audit and Governance Committee

Moved by

RESOLUTION TO RECOMMEND UPDATED PROCUREMENT POLICY

WHEREAS, the FLRLBC is a not-for-profit corporation duly organized and validly existing under the laws of the State of New York; and

WHEREAS, the FLRLBC Governance Committee is appointed by the FLRLBC Board of Directors (“Board”) to review the FLRLBC policies and recommend updates and changes as necessary which will assist in the implementation of its stated purposes and in compliance with the New York Not-For-Profit Corporation Law, the New York Public Authorities Accountability Act of 2005 and the New York Public Authorities Reform Act of 2009, as amended; and

WHEREAS, the FLRLBC Governance Committee has determined that updates are necessary to the Procurement Policy.

NOW, THEREFORE BE IT RESOLVED, by the Finger Lakes Regional Land Bank Corporation Governance Committee as follows:

1. The FLRLBC Governance Committee hereby updates the Procurement Policy in the form presented at the Meeting and as shown on Appendix A:

I, Caitlin Ryan, Secretary of the Finger Lakes Regional Land Bank Corporation, a corporation organized and existing under the laws of the State of New York (the "Corporation"), do hereby certify that the above is a true and correct copy of a resolution duly adopted at a meeting of the Governance Committee of the Corporation duly held and convened on March 25th, 2024, at which meeting a duly constituted quorum of the Committee was present and acting throughout, and that such resolution has not been modified, rescinded, or revoked, and is at present in full force and effect.

IN WITNESS THEREOF, the undersigned has affixed their signature this ____ day of _____, 20____. The Corporation has no corporate seal.

X _____
Caitlin Ryan, Secretary

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	Yes	Nay	Abstain	Absent
Jill Henry	[]	[]	[]	[]
Les Marquart	[]	[]	[]	[]
Frank Sinicropi	[]	[]	[]	[]

APPENDIX A

Adopted February 26, 2018

Modified and Readopted March 24, 2024

FINGER LAKES REGIONAL LAND BANK CORPORATION **PROCUREMENT OF GOODS AND SERVICES POLICY**

SECTION 1. PURPOSE AND AUTHORITY. The purpose of this document is to outline the procurement policy (the "Policy") of the Finger Lakes Regional Land Bank Corporation (the "Land Bank") applicable to the procurement of goods and services paid for by the Land Bank for its own use and benefit in accordance with New York Public Authorities Law §2824(1)(d). This Policy is intended to assure the prudent and economic use of the Land Bank's funds, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances and to guard against favoritism, improvidence, extravagance, fraud and corruption.

SECTION 2. DEFINITIONS. As used herein, the following terms shall have the meaning set forth below.

- a. **"Land Bank"** shall mean the Finger Lakes Regional Land Bank Corporation.
- b. **"Board"** shall mean the Board of Directors of the Land Bank.
- c. **"Chairman"** shall mean the Chairman of the Board.
- d. **"CEO/President"** shall mean the CEO/President of the Land Bank.
- e. **"Executive Law"** shall mean the New York State Executive Law as amended from time to time.
- f. **"Services"** shall mean any services performed for the Land Bank for a fee or other compensation, including legal, accounting, management consulting, investment banking, financial custody, investment management, construction management, construction, repair, planning, training, statistical, research, public relations, architectural, engineering, surveying or other consulting, professional or technical services. Services shall not include any services performed for the Land Bank by its employees within the scope of their employment responsibilities.
- g. **"Procurement Contract"** shall mean any agreement for the acquisition of goods, Services, or Other Services.
- h. **"Outside Contractor"** shall mean a person, firm, sole proprietor, partnership, company or corporation performing Services for the Land Bank pursuant to a written agreement.
- i. **"MWBE Division"** shall mean the division of minority and women's business development in the New York State Department of Economic Development.

- i. **"MWBE Threshold Contract"** shall mean a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the Land Bank is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials, or any combination of the forgoing to be performed for, or rendered or furnished to the Land Bank or;
- ii. a written agreement in excess of one-hundred thousand dollars (\$100,000.00) whereby the Land Bank is committed to expend or does expend funds for construction, demolition, replacement, major repair or renovation of real property and improvements thereon. Solely for the purpose of providing the opportunity for participation by certified businesses in the performance of MWBE Threshold Contracts, MWBE Threshold Contracts shall also include leases of real property by the Land Bank to a lessee where: the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such lessee; and the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon shall exceed the sum of one hundred thousand dollars (\$100,000.00).

j. **"Minority-Owned Business Enterprise"** shall have the same meaning herein as is set forth in Executive Law § 310(7).

k. **"Women-Owned Business Enterprise"** shall have the same meaning herein as is set forth in Executive Law § 310(15).

SECTION 3. DOCUMENTATION. Action taken in connection with each procurement must be supported by documentation. When an award is made other than to the lowest responsible offeror, the determination to make the award must be supported by documentation that justifies the award and sets forth the reasons why the award furthers the purposes of this Policy.

SECTION 4. INDIVIDUAL RESPONSIBLE FOR PURCHASING. The Executive Director of the Land Bank is responsible for purchasing goods and Services on behalf of the Land Bank.

SECTION 5. SERVICE CONTRACTS.¹

a. **Use of Outside Contractors.** The Land Bank may engage Outside Contractors to perform Services only if the CEO/President has determined that it is appropriate to do so. In making such a determination, the following factors shall be considered:

- i. the amount of time likely to be required in performing the services;
- ii. the degree of special skill likely to be required in performing the services;

¹ See also Appendix A for a chart outlining these requirements.

- iii. the availability of employees of the Land Bank possessing the skills needed to perform the services;
- iv. the likely expense of training employees of the Land Bank to perform the services, and the likely future benefits to the Land Bank of such training;
- v. the availability of Outside Contractors and the likely expense of using Outside Contractors;
- vi. the requirement that the services be rendered by an independent professional, as in the case of auditors' opinions or legal opinions;
- vii. the effect of use of Outside Contractors on other agreements and operations of the Land Bank;
- viii. the extent to which the Land Bank has successfully used Outside Contractors in the past for the services to be performed; and
- ix. the need to ensure that the Land Bank conducts its operations in the most effective and efficient manner.

b. **Selection of Outside Contractors.** Selection of Outside Contractors shall be made on a competitive basis as set forth herein, except where:

- i. The total value of the Procurement Contract is not likely to exceed \$1,000;
- ii. The CEO/President determines that (1) the need to obtain high quality services or services having unique or extraordinary features or time requirements substantially outweighs possible cost savings from selection on a competitive basis, or (2) the Land Bank has other cost control procedures to protect it from paying more for services than necessary; or
- iii. The Board otherwise determines that competition would be inappropriate.

c. The CEO/President, in his or her discretion, may enter into a Procurement Contract not likely to exceed \$1,000 on behalf of the Land Bank for without obtaining quotations or the approval of the Board.

d. **Request for Quotes.** When the total value of a Procurement Contract is likely to be between \$1,001 and \$20,000, the CEO/President shall request detailed proposals from at least three Outside Contractors known to have experience in the type of service to be performed. The responses from Outside Contractors may be in writing or oral.

e. **Request for Proposals or Qualifications.** When the total value of a Procurement Contract is likely to exceed \$20,000, the proposals shall be in writing and submitted in response to a Request for Proposals (“RFP”) or Request for Qualifications (“RFQ”) issued by the Land

Bank.

f. **Selection Criteria.** Quotations and RFP/RFQs shall be evaluated on the basis of all relevant factors such as the Outside Contractor's experience, reputation, technical qualifications, financial condition, past performance, size, responsibility, quality and availability of staff, identity of supervisory personnel, possible conflicts of interest, proposed scope of work and proposed fee or commission. No single factor shall necessarily be controlling, and the Outside Contractor submitting the proposal which is most favorable on an overall basis shall be selected, except that the CEO/President may reject any or all proposals if he or she considers such action in the best interests of the Land Bank.

g. **Construction Contracts.** Notwithstanding anything to the contrary herein, pursuant to Not-For-Profit Corporation Law § 1617, the Land Bank shall not award any construction, demolition, renovation or reconstruction contract greater than \$10,000 except to the lowest bidder who, in its opinion, is qualified to perform the work required and who is responsible and reliable. The Land Bank may, however, reject any or all bids or waive any informality in a bid if it believes that the public interest will be promoted thereby. The Land Bank may reject any bid, if, in its judgment, the business and technical organization, plant, resources, financial standing, or experience of the bidder justifies such rejection in view of the work to be performed.

When the total value of a Procurement Contract is likely to exceed \$100,000, the RFP may be preceded by a Request for Qualifications ("RFQ") from the Land Bank to ensure that only qualified Outside Contractors are invited to submit proposals. Outside Contractors will be determined qualified based on an evaluation of their experience, reputation, technical qualifications, financial condition, past performance, size, quality and availability of staff, identity of supervisory personnel, and any other relevant questions included in the RFQ.

h. **Board Notification.** The following Procurement Contracts for Services shall require the CEO/President to notify the Board that the Outside Contractor has been selected but shall not require a vote of the Board. The CEO/President may sign contracts and enter into engagements on behalf of the Land Bank for matters in this category provided the Board receives notice of the selection:

- i. Any contract involving Services to be rendered for which are likely to be between \$1,000 and \$10,000 in one year or less.

i. **Board Approval.** The following Procurement Contracts for Services shall require approval of the Board and an annual review by the Board:

- i. Any contract involving Services to be rendered over more than one year; and
- ii. Any contract for Services to be rendered which will cost between \$10,001 or more.

SECTION 6. GOODS AND OTHER SERVICES.²

a **Method of Purchase.** Selection of contracts for goods and services other than Services (“Other Services”) shall be made on a competitive basis except as otherwise set forth herein. The following method of purchase will be used when required by this Policy in order to achieve the highest quality and lowest cost:

<u>Estimated or Actual Value</u>	<u>Method and Approvals Required</u>
\$0 - \$1,000	The CEO/President, in his or her discretion, may enter into a contract on behalf of the Land Bank, or make a purchase for goods or Other Services, without obtaining quotations or the approval of the Board.
\$1,001 - \$10,000	At least three quotations, either oral or written, will be obtained. The Land Bank shall solicit such quotations utilizing sources most likely to identify the highest quality and lowest price of the particular good or service including, but not limited to, newspaper and magazine advertisements, internet searches, catalogs, and the prior experience of the Land Bank. The Land Bank shall create and maintain a written or digital record of the quotations solicited and received for such purchases. The CEO/President, or another Land Bank representative or employee designated by resolution of the Board, may enter into a contract on behalf of the Land Bank without obtaining the approval of the Board but must inform the Board of the contract.
\$10,001 - \$19,999	At least three written quotations will be obtained. The Land Bank shall solicit such quotations utilizing sources most likely to identify the highest quality and lowest price of the particular good or Other Service including, but not limited to, newspaper and magazine advertisements, internet searches, catalogs, and the prior experience of the Land Bank. The Land Bank shall create and maintain a written or digital record of the quotations solicited and received for such purchases. The Board must approve any contract in this category prior to its execution.
More than \$20,000	At least three written responses to a written RFP or RFQ issued by the Land Bank shall be required. The Board must approve any contract in this category prior to its execution.

b **Number of Proposals or Quotations.** A good faith effort shall be made to obtain the required number of proposals or quotations. If the Land Bank is unable to obtain the required number of proposals or quotations, the Land Bank will document the attempt made at obtaining

² See also Appendix A for a chart outlining these requirements.

the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement of the good or Other Service.

c. **Awarding Contracts.** The award of a contract for goods or Other Services shall be made to the lowest priced responsible offeror which meets the Land Bank's specifications. In assessing whether an offeror is responsible, the Land Bank should consider all relevant factors, such as the offeror's capacity and financial ability to complete the contract, past performance, experience, reliability, and integrity. Alternatively, the Land Bank may elect to award a contract based on "best value." "Best value" is defined for this purpose as a basis for awarding contracts to the offeror which optimizes quality, cost, and efficiency among responsive and responsible offerors. For purposes of best value, a responsive offeror is an offeror meeting the Land Bank's minimum specifications. In assessing best value, non-price factors may be considered. Such factors include, but are not limited to, the unique or outstanding qualifications of the offeror (including past experience with a particular issue or familiarity with Land Bank operations) and the reliability, efficiency of operation, difficulty/ease of maintenance, useful lifespan, and environmental impact of a product or practice, as applicable.

d. **Documentation.** Action taken in connection with each method of procurement must be supported by documentation.

SECTION 7. CIRCUMSTANCES WHERE SOLICITATION OF ALTERNATIVE PROPOSALS OR QUOTATIONS ARE NOT IN THE BEST INTEREST OF THE CORPORATION.

a. The Land Bank is not required to solicit alternative proposals or quotations if the CEO/President or Chairman, in his or her sole discretion, determines that such solicitation is not in the best interests of the Land Bank. In the following circumstances, it may not be in the best interests of the Land Bank to solicit alternative proposals or quotations:

- i. **Professional and Specialty Services.** Professional services or services requiring special or technical skill, training or expertise. The individual, company or firm must be chosen based on accountability, reliability, responsibility, skill, conflict of interests, reputation, education and training, judgment, integrity, continuity of service and moral worth. Furthermore, certain professional services to be provided to the Land Bank, e.g., legal and accounting services, impact liability issues of the Land Bank, including securities liability in circumstances where the Land Bank is issuing bonds. These qualifications and the concerns of the Land Bank regarding its liability is not necessarily found or addressed in the individual, company or firm that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

In determining whether a service fits into this category, the CEO/President shall take into consideration the following guidelines: (a) whether the services are subject to state licensing or testing requirements; (b) whether substantial formal education or training and experience is a necessary prerequisite to the performance of the services. Professional or technical services shall include

but not be limited to the following: services of an attorney (including bond counsel); technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing, editing, or art work; management of Land Bank-owned property; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

- ii. Emergency Purchases. In the case of an emergency, goods or services may be purchased immediately without competitive procedures. An emergency is an unanticipated occurrence beyond the control of the Land Bank that (1) threatens the life, health, safety or welfare of any person; (2) threatens the continued use or function any the Land Bank's property; or (3) is likely to cause damage to the Land Bank's property if immediate action is not taken. This section does not preclude alternate proposals, if time permits.
- iii. Sole Source. When there is only one source available for the required goods or services, the contract may be awarded without competitive procedures.
- iv. Purchases of Second-Hand Goods. Purchases of surplus or second-hand goods from any source may be purchased without competitive procedures. If alternate proposals were required, the Land Bank would be precluded from purchasing surplus or second-hand goods at auctions or through specific advertising sources where the best prices are usually obtained. It is also difficult to compare prices of used goods, and a lower price may indicate an older product.
- v. Goods or Services Under \$1,000. The time and documentation required to purchase through this Policy may be more costly than the item itself and would therefore not be in the best interests of the Land Bank. In addition, it is not likely that such minimal contracts would be awarded based on favoritism.
- vi. Buy Local. Reasonable preference will be given to making purchases locally and regionally.
- vii. NYS Bid. Goods and Services procured through NYS Bid process

b. **Written Report: Board Approval**. Any decision not to solicit alternative proposals or quotations for any Procurement Contract with an estimated or actual value in excess of \$1,000 must be supported by a written report setting forth the reasons for such decision and must be approved by the Board.

SECTION 8. POLICY REVIEW. The Land Bank shall review this Policy annually, and any amendments must be approved by the Board.

SECTION 9. GENERAL REQUIREMENTS.

a. All Procurement Contracts in an actual or estimated value in excess of \$1,000 shall be in writing and shall be executed by an authorized employee or officer of the Land Bank.

b. Regardless of the value of the Procurement Contract, any Procurement Contract involving Services to be rendered over a period exceeding one year must be approved by resolution of the Board and reviewed annually by the Board.

c. The form of every Procurement Contract shall be approved by the Land Bank's counsel prior to execution.

d. Procurement Contracts which require contractors to perform services on premises owned or controlled by the Land Bank shall require proof of Workers' Compensation and proof of liability insurance naming the Land Bank as additional insured and shall provide that the Outside Contractor indemnifies the Land Bank for the negligent acts and omissions of the Outside Contractor's employees. When appropriate and at the discretion of the Board, these contracts may further require the contractor to provide proof of environmental pollution insurance or any other requirement reasonably related to the business of the Land Bank or required of the Land Bank through its grant funding.

SECTION 11. PROMOTION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.

It is the goal of the Land Bank to award a fair share of Procurement Contracts to Minority-Owned Business Enterprises and Women-Owned Business Enterprises. It is also the Land Bank's goal to award Procurement Contracts to those procurement contractors who have evidenced compliance with the laws of the State of New York prohibiting discrimination in employment. The following procedures shall be followed (See also the Land Bank's Policy on Minority and Women-Owned Business Enterprises Equal Employment Opportunity adopted September 27, 2022):

a. For all contracts for goods and Services, bidders shall be encouraged to include with their bids or RFP responses separate proposals which would demonstrate how their selection will achieve the goals of this Section.

b. Empire State Development maintains a list of certified Minority-Owned Business Enterprises and Women-Owned Business Enterprises by name and area of expertise, and each individual responsible for soliciting bids and proposals for the Land Bank shall rely on Empire State Development's list, consult the list, and contact appropriate Minority and Women-Owned Businesses to encourage them to submit bids or RFP responses.

c. In selecting a bidder where a Minority-Owned Business Enterprise or Women-Owned Business Enterprise has been identified, due consideration shall be given to the goals of the Land Bank.

d. **Required Contract Provisions.**

- i. All MWBE Threshold Contracts, all documents soliciting bids or proposals for MWBE Threshold Contracts, and every subcontract between the contractor of a MWBE Threshold Contract and its subcontractors for the MWBE Threshold Contract shall contain or make reference to the provisions required by Executive Law § 312 concerning equal opportunities for minority groups and women.
- ii. All MWBE Threshold Contracts for construction, demolition, major repair or renovation of real property and improvements thereon shall include the provisions required by Executive Law § 313 concerning minority and women owned enterprises.
- iii. All MWBE Threshold Contracts shall include the provisions required by Executive Law § 316 and § 316-A concerning enforcement, prohibitions and violations.

e. **Copies to be provided.** Pursuant to § 315(2) of the Executive Law, the Land Bank shall provide to all prospective bidders for a MWBE Threshold Contract, a current copy of the directory of certified businesses, and a copy of the regulations required pursuant to § 312 and § 313 of the Executive Law at the time bids or proposals are solicited.

f. **Waivers.** In compliance with Executive Law § 313(6), where it appears that a contractor cannot, after a good faith effort, comply with the minority and women- owned business enterprise participation requirements set forth in a particular MWBE Threshold Contract, a contractor may file a written application with the Land Bank requesting a partial or total waiver of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts undertaken by the contractor to obtain the required minority and women-owned business enterprise participation. In implementing the provisions of this section, the contracting Land Bank shall consider the number and types of minority and women-owned business enterprises located in the region in which the MWBE Threshold Contract is to be performed, the total dollar value of the MWBE Threshold Contract, the scope of work to be performed and the project size and term. If, based on such considerations, the contracting Land Bank determines there is not a reasonable availability of contractors on the list of certified businesses to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such determination, the Land Bank shall first consider the availability of other business enterprises located in the region and shall thereafter consider the financial ability of Minority and Women-Owned Businesses located outside the region in which the contract is to be performed to perform the MWBE Threshold Contract.

g. **Monitoring.** The Land Bank shall comply with the monitoring requirements set forth in Executive Law § 315(1).

h. **Reports.** The Land Bank shall comply with the reporting requirements set forth in Executive Law § 315(3).

i. **Goals.** In all MWBE Threshold Contract Procurements the Land Bank shall set MWBE goals for contracts made directly or indirectly to minority and women- owned business enterprises, in accordance with the findings of the 2010 disparity study, to attempt to achieve the results with regard to total annual Procurement in regards to MWBE Threshold Contracts as set forth in Executive Law § 313(1).

j. **Duplication.** The Land Bank shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity and whether the imposition of the requirements of this section duplicate or conflict with any such law and if duplication or conflict exists, the Land Bank shall waive the applicability of this section to the extent of such duplication or conflict.

SECTION 12. MISCELLANEOUS PROVISIONS.

a. **Powers of Amendment.** Any modification or amendment of this Policy may be made by a supplemental resolution adopted at any duly constituted meeting of the Board; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Land Bank contracts, the terms of which were established pursuant to this Policy or to a previously existing policy.

b. **No Recourse Under This Policy.** No provision of this Policy shall be the basis for any claim based on this Policy against any member, officer or employee of the Land Bank or the Land Bank itself.

c. **Provisions Required By Law.** This Policy is hereby deemed to include any provision required by law to be included herein.

d. **Procurement Lobbying.** The CEO/President is designated as the individual who will act as an authorized contact during each procurement activity. Should any contacts occur during the procurement activity with any other person, the Land Bank shall maintain a written record of such contact. An impermissible contact is when a potential contractor initiates contact with someone other than the designated contact during a period when such contact is not permitted or attempts to influence the procurement in a manner that could reasonably be construed as a violation of procurement lobbying requirements.

APPENDIX A

Type	Cost	Bid Requirement	Approvals Required
All	0-\$1,000	None	CEO/President
All	\$1,000 to \$10,000	3 quotes (oral or written, subsequently documented by CEO/President)	CEO/President Notification to Board
All	\$10,001-\$20,000	3 written quotes	Board of Directors approval prior to contract
All	Over \$20,000	RFP/RFQ	Board of Directors approval prior to contract

Note:

1. All Procurement Contracts in an actual or estimated value in excess of \$1,000 shall be in writing and shall be executed by an authorized employee or officer of the Land Bank.
2. The form of every Procurement Contract shall be approved by the Land Bank's counsel prior to execution.