

# Wayne County Regional Land Bank

## Procurement Policy

Effective 12/14/2023

### SECTION 1. PURPOSE AND AUTHORITY.

The purpose of this document is to outline the procurement policy (the "Policy") of the Wayne County 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 Wayne County 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. "Executive Director" shall mean the Executive Director of the Land Bank.
- e. "Deputy Director" shall mean the Deputy Director of the Land Bank
- f. "Executive Law" shall mean the New York State Executive Law as amended from time to time.
- g. "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.
- h. "Procurement Contract" shall mean any agreement for the acquisition of goods or Services.
- i. "Outside Contractor" shall mean a person, firm, sole proprietor, partnership, company or corporation performing Services for the Land Bank pursuant to a written agreement.
- j. "MWBE Division" shall mean the division of minority and women's business development in the New York State Department of Economic Development.
- k. "MWBE Threshold Contract" shall mean:
  - 1) 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;

2) 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).

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

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

### **SECTION 3. DOCUMENTATION AND RECORD RETENTION**

Action taken in connection with each procurement must be supported by documentation. When an award is made to 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.

The Land Bank shall retain records in accordance with accepted standards and requirements for historical reference or to comply with contractual or legal requirements.

In accordance with 18 U.S.C Section 1519 and the Sarbanes Oxley Act, the Land Bank shall not knowingly destroy a document with the intent to obstruct or influence an "investigation or proper administration of any matter within the jurisdiction of the agency of the United States...or in relation to or contemplation of such matter or case." If an official investigation is underway or even suspected, document purging must stop to avoid criminal obstruction.

WCRLB ensures that necessary records and documents are protected and maintained as prescribed by appropriate federal and State laws, regulations, and contractual agreements.

WCRLB shall maintain procurement records that include the following, at a minimum:

1. Basis for contractor selection
2. Justification for lack of competitive bids
3. Basis for award cost or price

WCRLB shall maintain all procurement records, documents, correspondence, etc. regardless of the dollar amount for each project and the file(s) for each project should be easily accessible to WCRLB employees as well as any federally authorized representative. Records will be retained

for a length of time that satisfies the fund agreement terms, or a length of seven years following the completion of the project.

#### **SECTION 4. INDIVIDUALS RESPONSIBLE FOR PURCHASING**

The Executive Director and Deputy Director of the Land Bank are responsible for purchasing goods and services on behalf of the Land Bank.

#### **SECTION 5. SERVICE CONTRACTS**

##### **a. Use of Outside Contractors.**

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

- 1) the amount of time likely to be required in performing the services;
- 2) the degree of special skill likely to be required in performing the services;
- 3) the availability of employees of the Land Bank possessing the skills needed to perform the services;
- 4) 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;
- 5) the availability of Outside Contractors and the likely expense of using Outside Contractors;
- 6) the requirement that the services be rendered by an independent professional, as in the case of auditors' opinions or legal opinions;
- 7) the effect of use of Outside Contractors on other agreements and operations of the Land Bank;
- 8) the extent to which the Land Bank has successfully used Outside Contractors in the past for the services to be performed; and
- 9) the need to assure 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, except where:

- 1) The total value of the Procurement Contract is not likely to exceed \$6,000;
- 2) The Executive Director determines that (a) 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 (b) the Land

Bank has other cost control procedures to protect it from paying more for services than necessary; or

3) The Board otherwise determines that competition would be inappropriate.

**c) Request for Proposals.**

Where selection is made on a competitive basis for services, the Executive Director shall request detailed proposals from at least three Outside Contractors known to have experience in the type of service to be performed. When the total value of a Procurement Contract is likely to exceed \$40,000, the proposals shall be in writing and submitted in response to a Request for Proposals (“RFP”) issued by the Land Bank. Proposals 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, quality and availability of staff, timely project completion, 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 Executive Director may reject any or all proposals if he or she considers such action in the best interests of the Land Bank.

**d. Board Approval.**

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

- 1) Any contract involving Services to be rendered over more than one year; and
- 2) Any contract for Services that is likely to result in total payment to the Outside Contractor in excess of \$15,000 per year.

**SECTION 6. GOODS AND SERVICES**

**a. Method of Purchase.** Selection of contracts for goods and services *other than construction contracts (see Section 7)* shall be made on a competitive basis according to the following thresholds and methods; except as otherwise set forth herein.

<b><u>Estimated or Actual Value</u></b>	<b><u>Method and Approvals Required</u></b>
\$0 - \$6,000	The Executive Director, in his or her discretion, may enter into a contract on behalf of the Land Bank without obtaining quotations or the approval of the Board.
\$6,001- \$15,000	At least three quotations/proposals, 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, chamber of commerce recommendations 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 Executive

Director or, in the absence of the Executive Director, the Deputy Director may enter into a contract on behalf of the Land Bank without obtaining the approval of the Board.

\$15,001- \$40,000

At least three written quotations/proposals 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, chamber of commerce recommendations 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. Any contract entered into by the Land Bank shall be approved by the Board.

More than \$40,000

A request for proposals (RFP) or official competitive bid (Bid) issued by the Land Bank shall be required to solicit such purchases. RFPs and Bids shall be required to be advertised in the Land Bank's designated paper for at least one publication and posted on the Land Bank's website for the duration of the solicitation. Any contract entered into by the Land Bank shall be approved by the Board.

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

**c. Awarding Contracts.**

The award of a contract for goods or such 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 and kept with the procurement file.

## **SECTION 7. CONSTRUCTION CONTRACTS**

### **Estimated or Actual Value**

### **Method and Approvals Required**

\$0 - \$6,000

The Executive Director, in his or her discretion, may enter into a contract on behalf of the Land Bank without obtaining quotations or the approval of the Board.

\$6,001- \$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 for the project. The Land Bank shall create and maintain a written or digital record of the quotations solicited and received for such purchases. The Executive Director or, in the absence of the Executive Director, the Deputy Director may enter into a contract on behalf of the Land Bank without obtaining the approval of the Board.

More than \$10,000\*

Official competitive bid (Bid) issued by the Land Bank shall be required. Bids shall be required to be advertised in the Land Bank's designated paper for at least one publication and posted on the Land Bank's website for the duration of the solicitation. Award shall be made to the lowest responsive and responsible bidder. Any contract entered into by the Land Bank shall be approved by the Board.

\*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.

If WCRLB has any agreements, sub-agreements, or loans that involve federally funded construction, alteration, or repair contracts over \$2,000, the contracts or agreements will contain the required clauses for complying with Davis-Bacon Act wage rates, reporting requirements and include a wage rate determination from the Department of Labor at <https://beta.sam.gov/>.

## **SECTION 8. 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 Executive Director 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:

### **1) Professional and Contracted 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 Agency, e.g., legal and accounting services, impact liability issues of the Agency and its members, including securities liability in circumstances where the Agency is issuing bonds. These qualifications and the concerns of the Agency regarding its liability and the liability of its members are 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 Agency 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; architectural services, 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 Agency-owned property; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of prepackaged software.

### **2) 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.

### **3) Sole Source.**

When there is only one source available for the required goods or services, the contract may be awarded without competitive procedures.

### **4) Purchases of Second-Hand Goods.**

Purchases of surplus or secondhand 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.

#### **5) Experimental Projects.**

When the Land Bank wishes to test a new product or technology or evaluate a new source for a product or technology, the Land Bank may award a contract without competitive procedures, provided the contract is limited to the purchase of such goods or services that are necessary to conduct the experiment or test.

#### **6) Goods or Services Under \$6,000.**

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.

#### **7) Buy Local.**

Reasonable preference will be given to making purchases locally and regionally.

#### **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 \$6,000 must be supported by a written report setting forth the reasons for such decision and must be approved by the Board.

### **SECTION 9. POLICY REVIEW**

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

### **SECTION 10. GENERAL REQUIREMENTS**

- a. All Procurement Contracts 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.

## **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:

- a. For all contracts for goods and Services, respondents shall be encouraged to include with their bid 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 consult Empire State Development's 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
  - 1) 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.
  - 2) 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.
  - 3) 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 agency 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 agency determines there is not a reasonable availability of contractors on the list of certified business 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. The Land Bank will comply with all MWBE/DBE goals and requirements as set forth by applicable funding sources. 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. PURCHASING WITH FEDERAL AWARD FUNDS**

Purchases made when procuring property or services through a federal award with federal funds follow the procurement standards under the Federal Uniform Grants Guidance.

Procurement transactions maximize free and open competition. Written solicitations have a

clear scope of work, requirements and features prospective bidders must meet, a preference to conserving natural resources and the environment, and positive efforts to use small, disadvantaged and minority owned firms when possible. The organization documents the reason for the type of procurement used, the basis for contractor selection, a justification for lack of competition or sole-source procurement, and the basis for award cost and price.

Purchase requirements are based on the current federally adopted simplified acquisition thresholds (SAT). Purchases exceeding \$100,000 are subject to pre-award review by the Federal Entity to ensure procurement procedures are adequate. Special consideration is given to environmentally friendly, and energy efficient products/services (2 CFR 200.322) Quotes and bids must include specifications and qualifying characteristics considered by the vendor/contractor, including delivery and time frame, the scope of work, references, and other relevant specifications. A quote is a written statement from a vendor regarding the price for a specific good or service.

## **UNIFORM GUIDANCE COMPLIANCE FOR FEDERAL AWARDS- PROCUREMENT, SUSPENSION AND DEBARMENT**

### **§ 140-16.1 Purpose**

2 CFR Part 200 (subparts A-F) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards requires organizations receiving federal awards to establish and maintain effective internal controls over federal awards.

### **§140-16.2 General Policy Statement**

The requirements for procurements using federal awards are contained in the Uniform Guidance (2 CFR Part 200, subparts A-F), program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

To comply with 2 CFR Part 200 (subparts A-F), the Wayne County Land Bank (Land Bank) implements policies and procedures, including, but not limited to:

- A. The Land Bank will use its own documented procurement procedures which reflect applicable State and Public Authority laws and regulations; provided that the procurements conform to applicable federal law and Uniform Guidance. As such, Land Bank procurements related to Federal grants will be subject to Wayne County Land Bank Procurement Policy and Uniformed Guidance Requirements.
- B. Contract files will document the significant history of the procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis of contract price.
- C. The Land Bank will utilize one of the acceptable procurement methodologies and purchase thresholds detailed in Sections 6, 7, and 8 above.
- D. Procurements will provide for full and open competition as set forth in the Uniform Guidance, or the Land Bank Procurement Policy, whichever is most restrictive.
- E. No employee, officer or agent may participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee,

officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents can neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. If the financial interest is not substantial or the gift is an unsolicited item of nominal value, no further action will be taken. However, disciplinary actions will be applied for violations of such standards otherwise.

F. The Land Bank will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical procurement approach. The Land Bank will also analyze other means, as described in §200.318 of the Uniform Guidance, to ensure appropriate and economical acquisitions.

G. The Land Bank will enter into inter-local agreements, where appropriate.

H. The Land Bank will only utilize Time and Materials contracts when it has been determined, in writing, that no other contract type is suitable.

I. Vendors/Contractors that develop or draft specifications, requirements, statements of work, or invitation to bids or requests for proposals must be excluded from competing for such procurements.

J. The Land Bank will make available, upon request of the federal awarding agency or pass-through entity, technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such review is needed.

K. The Land Bank is prohibited from contracting with or making sub awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. "Covered Transactions" include those procurement contracts for goods and services awarded under a non-procurement transaction (i.e. grant or cooperative agreement) that are expected to equal or exceed \$20,000. All non-procurement transactions (i.e. sub-awards to recipients), irrespective of award amount, are considered covered transactions.

L. The Land Bank will include a suspension/debarment clause in all written contracts in which the vendor/contractor will certify that it is not suspended or debarred. The contract will also contain language requiring the vendor/contractor to notify the Land Bank immediately upon becoming suspended or debarred. This will serve as adequate documentation as long as the contract remains in effect.

M. The Land Bank will be responsible for running the vendor/Contractor's name through the System for Award Management (SAM) to determine any exclusions. A copy of the SAM search will be included with the procurement file. Prior to entering into an agreement with a vendor, Land Bank staff will check the SAM to determine if any exclusions exist for the Vendor/Contractor. If a vendor/contractor is found to be

suspended or debarred, the Land Bank will immediately cease to do business with the vendor.

N. The Land Bank will not use statutorily or administratively imposed state, local or tribal geographical preferences in the evaluation of bids or proposals; except in those cases where applicable federal statutes expressly mandate or encourage geographical preference.

O. The Land Bank will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor area surplus area firms are used when possible.

P. The Land Bank will require appropriate bonding requirements as per §200.326.

Q. The Land Bank will only award contracts to Responsible Vendors and will document, in writing, such determination.

R. Land Bank contracts will contain the applicable provisions described in Appendix II to part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

S. The Land Bank will maintain oversight to ensure that contractors perform in accordance with the contracts terms, conditions, and specifications.

T. Copies of executed contracts will be electronically filed and maintained on a permanent hard drive.

U. Any sub-award agreements shall include a clause for contract termination in the case of default or other causes that may call for termination.

V. WCRLB will maintain oversight over contractors and/or sub recipients to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. This may be in the form of meeting, reports, and review of end products.

### **Cost and Price Analysis**

WCRLB shall conduct some form of cost or price analysis and document the file in connection with procurement actions. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

Profit, administrative costs, and overhead associated with the project must be evaluated separately, giving consideration to the complexity of the work to be performed, the risk borne to the contractor, and other such factors that would influence the cost.

### **Davis-Bacon Act**

Davis Bacon wages are required whenever federal funds are being used unless a written exclusion from the granting agency for a specific award is received.

If WCRLB has any agreements, sub-agreements, or loans that involve federally funded construction, alteration, or repair contracts over \$2,000, the contracts or agreements will contain

the required clauses for complying with Davis-Bacon Act wage rates, reporting requirements and include a wage rate determination from the Department of Labor at <https://beta.sam.gov/>.

### **Consultants**

When consultants' services are used, WCRLB will execute a consulting agreement specifying the services to be provided, duration, and pay rates that include base rate, fringe benefits, and overhead, if applicable.

### **Consultant Cap**

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

-Information on how to calculate the maximum daily rate and the daily pay limitation is available at the Office of Personnel Management's Fact Sheet: How to Compute Rates of Pay (<https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/how-to-compute-rates-of-pay/>) and Fact Sheet: Expert and consultant Pay (<https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/expert-and-consultant-pay/>). Specifically, to determine the maximum daily rate, follow these steps:

(1) Divide the Level IV salary by 2087 to determine the hourly rate. Rates must be rounded to the nearest cent, counting one-half cent and over as the next higher cent (e.g., round \$18.845 to \$18.85).

(2) Multiply the hourly rate by 8 hours. The product is the maximum daily rate...."

### **DBE Good Faith Efforts for Federal Assistance Agreements**

Disadvantaged Business Enterprises (DBE). Positive, good faith efforts will be made to utilize and solicit small businesses, veteran-owned businesses, women-owned businesses, minority-owned businesses, or labor surplus areas when procuring construction, equipment, services, and supplies. These efforts include:

- I. Placing qualified DBE Vendors on solicitation lists;
- II. Soliciting DBE Vendors whenever they are potential sources;
- III. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBE Vendors;
- IV. Establishing delivery schedules, where requirement permits, which encourage participation by DBE Vendors;
- V. Using services and assistance, as appropriate, of such organizations as Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

- VI. Requiring the prime contractor, if subcontracts used, to take affirmative steps listed in paragraphs (i) through (v) of this section.

All efforts considered and utilized will be documented and made a part of the federal grant file.

As applicable, the Wayne County Land Bank will submit the required MBE/WBE Utilization Form (<https://www.epa.gov/grants/epa-form-5700-52a-united-states-environmental-protection-agency-minority-business>), at least annually, to applicable federal agencies for any assistance agreement when: funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under sub-awards or loans in the "Other" category) with a cumulative total that exceed the Simplified Acquisition Threshold (SAT) (currently, \$250,000), including amendments and/or modifications. Note: The threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1)

## **SECTION 13. 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.