

TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY

Statement of Procurement Policy and Procedures

The primary objectives of this Statement of Procurement Policy and Procedures (this "Policy") is to assure the prudent and economical use of the Town of Babylon Industrial Development Agency (the "Agency") moneys, to facilitate the acquisition by the Agency 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.

In accordance with Section 2824 of the Public Authorities Law and Section 104-b of the New York State General Municipal Law ("GML"), the Agency is required to adopt procurement policies with respect to the procurement of goods and services paid for by the Agency for its own use and account. Procurements for the benefit of a third party and for which payment is made from funds provided by such third party or any other person or entity other than the Agency, shall not be subject to the requirements of this Policy.

If the Agency proposes to enter into a contract or agreement for goods or services and will receive funds for this contract or agreement under or through a contract between the Agency and The Town of Babylon (the "Town") the contract or agreement shall be procured in accordance with the procurement provisions required by the Town in the applicable contract between the Agency and the Town. If the Agency procures goods or services using funds that are provided under or through a contract between the Agency and the federal, state or county government, it shall use such procurement method as is required by the source of funds. If the source of funds does not specify a procurement method, the Agency shall use this Policy.

Procurement Process Oversight

The CEO shall oversee any procurement process undertaken on behalf of the Agency. The CEO shall be the Contracting Officer of the Agency and any reference herein to the CEO shall also be deemed to mean the Contracting Officer. He may from time to time appoint a designee in writing to serve as the contracting officer.

Procedures

The Agency shall, unless the members of the Agency adopt a resolution providing otherwise, adhere to the following procedures:

I. Pre-Procurement Determination

Prior to the commencement of any procurement, the CEO shall prepare a written statement setting forth the basis for (a) any determination that a competitive

process is not required for such procurement, or (2) any determination that such procurement is not subject to one (1) or more other requirements of this Policy.

The CEO shall advise the Board of the initiation of any procurement process by the CEO on behalf of the Agency and his or her intended method of procuring the required goods or services. The CEO shall keep the Board advised as to the status of each procurement process.

II. Competitive Procurement

A. Rule: Except as otherwise set forth in this Policy, a competitive process is required for the procurement of the following contracts:

(i) a "public work contract" involving an expenditure of more than \$200,000. A "public work contract" means a contract between the Agency and a contractor pursuant to which the contractor provides services (including construction services) or labor to the Agency for the Agency's own use or account.

(ii) a "purchase contract" involving an expenditure of more than \$100,000. A "purchase contract" means a contract between the Agency and a contractor pursuant to which the Agency acquires commodities, materials, supplies or equipment from a contractor.

B. Competitive Process: The competitive process to be utilized shall, unless the members of the Agency adopt a resolution providing otherwise, be overseen by the CEO and comply with the following:

(i) All solicitations and requests for proposals should be in writing and should incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description should not contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, should set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors should be clearly stated and should identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(ii) Requests for bids/proposals should be publicly advertised by placing them on the Agency and/or the Town's website and/or by placing notice in either a newspaper of general circulation or a trade journal, if appropriate. The goal of this Policy is to seek the widest, cost-effective distribute of the request for bids/proposals.

(iii) Bids/proposals should be solicited from an adequate number of qualified sources.

(iv) The CEO should establish a method for conducting evaluations of the bids/proposals received and for selecting awardees for the procurement in accordance with this Policy.

C. Exceptions: Notwithstanding the provisions of Section II.A. above, a competitive process is not required:

(i) for certain purchases made through Suffolk County or other counties in New York State pursuant to Section 103(3) of the GML;

(ii) for certain purchase made through the State of New York pursuant to Section 104 of the GML;

(iii) for certain purchases made through the Town of Babylon or other Towns in New York State or Incorporated Villages within the Town of Babylon

(iv) for certain purchase made from agencies for the blind or severely handicapped pursuant to Section 175-b of the State Finance Law;

(v) for certain purchases of articles manufactured in correctional institutions pursuant to Section 186 of the Correction Law;

(vi) in the event of a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or life, health, safety or property of some or all of the inhabitants of the Town require immediate action which cannot await a competitive procurement;

(vii) for the purchase of surplus and second-hand supplies, material or equipment, which may be purchased from the federal government, the State of New York or from any political subdivision, district or public benefit corporation of the State of New York;

(viii) where the members of the Agency adopt a resolution waiving the competitive process because such process is deemed impracticable under the circumstances; and

(ix) where there is only one possible source from which to procure the required good or service and it is determined by resolution of the members of the Agency that the required good or service has unique benefits, the cost is reasonable for the good or service and there is no competition reasonably available.

III. Non-Competitive Procurement for Purchase Contracts Under \$100,000

A. Purchase Contracts Valued at \$1,500 and Under. All purchase contracts valued at \$1,500 and under shall be awarded by the CEO using his/her judgment as to the most appropriate vendor, without further documentation.

B. Purchase Contracts Valued at over \$1,500 but Not Exceeding \$75,000. The CEO shall use reasonable efforts to obtain at least three (3) verbal bids or price quotations for such procurement. The CEO shall document, in reasonable detail, such efforts and the result.

C. Purchase Contracts Valued at over \$75,000 but Not Exceeding \$100,000. The CEO shall use reasonable efforts to obtain at least three (3) written/fax bids or price quotations for such procurement. The CEO shall document, in reasonable detail, such efforts and the result.

IV. Non-Competitive Procurement for Public Work Contracts Under \$200,000

A. Public Work Contracts Valued at \$30,000 and Under. All public work contracts valued at \$30,000 and under shall be awarded by the Agency's CEO using his/her judgment as to the most appropriate vendor, without further documentation.

B. Public Work Contracts Valued at over \$30,000 but Not Exceeding \$150,000. The CEO shall use reasonable efforts to obtain at least three (3) verbal bids or price quotations for such procurement. The CEO shall document, in reasonable detail, such efforts and the result.

C. Public Work Contracts Value at Over \$150,000 but Not Exceeding \$200,000. The CEO shall use reasonable efforts to obtain at least three (3) written/fax bids or price quotations for such procurement. The CEO shall document, in reasonable detail, such efforts and the result.

D. Exceptions.

(i) Professional Services. Contracts for professional services involving application of specialized expertise, the use of professional judgment and/or a high degree of creativity shall not be subject to the competitive process above. Professional services include services which require special education and/or training, license to practice or are creative in nature. Furthermore, professional service contracts often involve a relationship of personal trust and confidence. Examples of professional and creative services are: (a) legal counseling and representation (including general and bond counsel); (ii) medical services; (iii) engineering and architectural services; (iv) lobbying, legislative and intergovernmental relations advice and representation; and (v) public relations services. All contracts for professional services shall be awarded by resolution of the members of the Agency based upon a consideration of cost, experience, expertise, reputation, location and suitability for the needs of the Agency.

(ii) Insurance. All insurance policies shall be procured in accordance with the following procedures:

(a) Premium not exceeding \$10,000. The CEO shall use reasonable efforts to obtain verbal quotations from at least three (3) agents or insurance companies. The CEO shall document, in reasonable detail, such efforts and the result.

(b) Premium exceeding \$10,000. The CEO shall use reasonable efforts to obtain written/fax quotations from at least three (3) agents or insurance companies. The CEO shall document, in reasonable detail, such efforts and the result.

(iii) Marketing. Contracts for marketing, promotional advertising and sponsorship of charitable and civic events and similar services shall not be subject to the competitive process set forth above, provided that the members of the Agency shall determine by resolution that such contract is in furtherance of the purposes of the Agency. Notwithstanding the foregoing, the award of contracts, of up to \$150,000 each, for marketing, promotional advertising, sponsorship and similar services may be awarded by the CEO using his/her judgment, in keeping with the best interests of the Agency.

(iv) Office supplies: orders of less than \$1,000 made through the Agency's Staples accounts, or its assigned successor, are not subject to this policy.

V. Award/Documentation of Contracts

A. Basis for Award of Contracts. Contracts will be awarded to the lowest cost responsible offeror/bidder who meets the specifications for the procurement, except in circumstances that the CEO determines justify an award to other than the lowest cost responsible offeror/bidder.

B. Justification of Award to Other Than Lowest Cost Offer/Bid. In making a determination to award a contract to other than the lowest cost responsible offeror/bidder, the CEO shall consider relevant factors, including, without limitation:

- (i) Delivery requirements;
- (ii) Quality requirements;
- (iii) Past vendor performance;
- (iv) Quality;
- (v) The unavailability of three (3) or more contractors/vendors who are able to quote/bid on the procurement; and
- (vi) That it may be in the best interest of the Agency to consider only one (1) contractor/vendor who has previous expertise with respect to a particular procurement.

C. Documentation.

- (i) A record of all solicitations for proposals or quotations, the response (if applicable), and any determinations pursuant thereto shall be maintained in the Agency's procurement file.
- (ii) For each procurement, the CEO shall set forth in writing the category of procurement being made and what method of procurement is being utilized.
- (iii) For procurements not subject to the competitive process, documentation should include a memo to the Agency's procurement file which details why the procurement is not subject to the competitive process and include, as applicable, a description of the facts and circumstances giving rise to the exception.
- (iv) Whenever a contract is awarded to other than the lowest cost responsible offeror/bidder, the reasons therefore shall be set forth in writing and maintained in the procurement file.

(v) Whenever the specified number of quotations/bids cannot or will not be obtained, the reasons therefore shall be set forth in writing and maintained in the procurement file.

VI. Miscellaneous Provisions

A. Minority and Women-Owned Business Enterprises. The Agency shall comply with all applicable legal requirements relating to the hiring of such businesses.

B. Procurement Lobbying Law. In accordance with Chapter 1 of the 2005 Laws of New York (the "Procurement Lobbying Law"), the Agency shall implement the provisions of such Procurement Lobbying Law for any contract or other agreement for any procurement involving an estimated annualized expenditure in excess of \$15,000.

The person authorized to be the contact for the Agency with respect to all procurements covered by the Procurement Lobbying Law (i.e., the Contracting Officer unless otherwise determined by the members of the Agency) shall be as set forth in Section 139-j(2)(a) of the Public Authorities Law and the activities of such contact person shall be reviewed at least annually by the Board to ensure that said person's activities with respect to Agency's procurements are in full compliance with applicable law.

Potential offerors/bidders shall be advised by the Contracting Officer that they are not permitted to contact any other Agency personnel in contravention of Section 139-j(10) of the Public Authorities Law. Each member, officer, director, agent and employee of the Agency shall report any such unauthorized contact to the general counsel to the Agency. General counsel to the Agency shall investigate any allegations of unauthorized contact and report in writing the findings of such investigation to the members of the Agency.

C. Comments concerning this Policy shall be solicited from the members of the Agency from time to time and the Agency should review this Policy annually.

D. The CEO shall present any legal issues regarding the applicability of the provisions of this Policy to the Agency's General Counsel.

E. Subject to the foregoing limitations on the awards of contracts for goods and services, the CEO and Chief Financial Officer (the "CFO") are authorized and empowered to request proposals and/or qualifications and otherwise obtain information regarding potential Agency contracts.

F. The foregoing procedures are in addition to and not in lieu of the safeguards and procedures adopted by the Agency from time to time regarding check writing authority and the Agency's budget process.

G. In the absence or unavailability of the Agency's CEO to act as aforesaid, the CFO is authorized to award any contracts with the same authority of the CEO as aforesaid.

H. The Agency may, from time to time, adopt different procedures, or deviate from any of the above procedures, on a case-by-case basis.

I. Pursuant to Section 104-b of the GML, the unintentional failure to fully comply with the provisions of this Policy shall not be grounds to void action taken or give rise to a cause of action against the Agency or any member, officer or employee thereof.