

CITY OF NEWBURGH

INDUSTRIAL DEVELOPMENT AGENCY

Procurement Policy

A. Preamble

1. Scope – In accordance with Section 2824 of the Public Authorities Law and Sections 858-a and 104-b of the General Municipal Law (the “GML”), the City of Newburgh Industrial Development Agency (the “agency”) is required to adopt procurement policies which will apply to the procurement of goods and services paid for by the agency for its own use and account. Purchases made for the benefit of a third party and for which payment is to be made from funds provided by such third party (or by another third party) shall not be subject to the requirements of this Procurement Policy.

While the agency is not obligated pursuant to the GML to require competitive bidding on its contracts, the agency finds that its policy is advanced by requiring public bidding under certain circumstances.

2. Purpose – Pursuant to Section 104-b of the GML, the primary objectives of this policy are to assure the prudent and economical use of public monies in the best interests of the taxpayers of the City of Newburgh (the “city”), 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.

B. Procurement Policy

1. Determination required — Prior to commencing any procurement of goods and services, the Chairman, or the Executive Director or an authorized designee, shall prepare a written statement setting forth the basis for (1) any determination made that competitive bidding is not required for such procurement, and if applicable (2) any determination made that such procurement is not subject to any requirements set forth in this policy. Such written statements shall be maintained by the Executive Director or an authorized designee in a specially designated procurement file.

2. Procedure for determining whether procurements are subject to competitive bidding – the procedure for determining whether a procurement of goods and services is subject to competitive bidding shall be as follows:

a. The Chairman or the Executive Director or an authorized designee shall make the initial determination as to whether competitive bidding is required. This determination will be based on Section 103 of the GML, which requires competitive bidding for expenditures by a political subdivision of (1) more than \$35,000 for the performance of any public works contract

(services, labor or construction), and (2) more than \$20,000 for any purchase contract (acquisition of commodities, materials, supplies or equipment).

b. The Chairman or the Executive Director or such authorized designee shall review the purchase request against prior years' expenditures and a good faith effort will be made to determine whether it is known or can reasonably be expected that the aggregate purchases of a similar nature will exceed the above. If so, competitive bidding procedures shall be followed for said expenditure.

c. The Chairman or the Executive Director or such authorized designee shall present any legal issues regarding the applicability of the competitive bidding requirements stated herein to the Agency's Counsel.

3. Procedures to be used where competitive bidding is required — Where the Chairman or the Executive Director or such authorized designee shall have determined that competitive bidding is required pursuant to paragraph 2 above, then the procedures set forth in Section 103 of the GML shall be followed in respect of such procurement.

4. Methods of competition to be used for non-bid procurements and procurements exempt by statute — Alternative proposals or quotations for goods and services shall be secured by use of written requests for proposals or written quotations, verbal quotations, or any other method of procurement which furthers the purposes of this section except for items excepted herein (see 7 below) or procurements made pursuant to:

- a. GML, Section 103 (3) (through city contracts), or
- b. GML, Section 104 (through state contracts), or
- c. State Finance Law, Section 175-b (from agencies for the blind or severely handicapped), or
- d. Correction Law, Section 186 (articles manufactured in correctional institutions).

5. Procedures for the Purchase of Commodities, Equipment or Goods under \$10,000.

- a. Up to \$500 The discretion of the Chairman or the Executive Director or authorized designee.
- b. \$501 - \$3,000 Documented verbal quotations from at least three vendors.
- c. \$3,001 - \$10,000 Written/fax quotations from at least three vendors.

6. Procedures for the purchase of public works or services under \$20,000.

- a. Up to \$1000 The discretion of the Chairman or the Executive Director or authorized designee.
- b. \$1,001 - \$5,000 Documented verbal quotations from at least three vendors.
- c. \$5,001 - \$20,000 Written/fax quotations from at least three vendors.

7. Basis for the awarding of contracts – Contracts will be awarded to the lowest responsible vendor who meets the specifications.
8. Circumstances justifying an award to other than the lowest-cost quoted.
 - a. Delivery requirements
 - b. Quality requirements
 - c. Past vendor performance
 - d. The unavailability of three or more vendors who are able to quote on a procurement.
 - e. It may be in the best interests of the Agency to consider only one vendor who has previous expertise with respect to a particular procurement.
9. Documentation
 - a. For each purchase made the Chairman or the Executive Director or authorized designee shall set forth in writing the category of procurement that is being made and what method of procurement is specified.
 - b. The basis for any determination that competitive bidding is not required shall be documented, in writing, by the Chairman or the Executive Director or such authorized designee, and filed with the purchase order or contract therefore.
 - c. For those items not subject to competitive bidding such as professional services, emergencies, purchases under city contracts, or procurements from sole sources, documentation should include a memo to the files which details why the procurement is not subject to competitive bidding and include, as applicable:
 - (1) a description of the facts giving rise to the emergency and that they meet the statutory criteria;
 - (2) a description of the professional services;
 - (3) written verification of city contracts;
 - (4) opinions of Counsel, if any
 - (5) a description of sole source items and how such determinations were made.
 - d. Whenever an award is made to other than the lowest quote the reasons for doing so shall be set forth in writing and maintained in the procurement file.
 - e. Whenever the specified number of quotations cannot or will not be secured, the reasons for this shall be indicated in writing and maintained in the procurement file.
10. Exceptions to bidding and alternative methods of competition
 - a. Emergency Situation — An emergency exists if the delay caused by soliciting quotes would endanger the health, welfare, or property of the municipality or of its citizens. With

approval by the Chairman or the Executive Director, such emergency shall not be subject to competitive bidding or the alternative procedures stated above.

b. Resolution waiving bidding requirements — The agency may adopt a resolution waiving the competitive bidding requirements whenever it is determined to be impracticable.

c. Sole source — Defined as a situation when there is only one possible source from which to procure goods and/or services and it is shown that the item needed has unique benefits, the cost is reasonable for the product offered, and there is no competition available. In this situation, a request for a resolution waiving bidding requirements, as described above, is required.

d. True Lease — Prices will be obtained through quotations whenever possible. The award shall be made on the basis of goods and/or services to be provided, ability to meet the specifications desired and price.

e. Insurance — All insurance policies shall be procured in accordance with the following procedures:

- (1) Premium less than \$10,000 — documented telephone quotations from at least three agents (if available).
- (2) Premium over \$10,001 — written quotations/fax or proposals from at least three agents (if available).

f. Professional and creative services — This category includes services which require special education and/or training, license to practice, or are creative in nature. It is the intent of the agency that this category be co-extensive with the category of services which are exempt from the requirements of competitive bidding under Section 103 of the GML. Examples of professional and creative services are: (i) 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; (v) public relations services; (vi) marketing and promotional services (including real estate brokerage). Professional services agreements are not required to be awarded to the lowest responsible bidder, but rather the agency may base its determination upon a review of such information as the agency shall deem appropriate. All contracts for professional services shall be awarded by resolution of the agency based upon a consideration of cost, experience, expertise, reputation, location, and suitability for the needs of the agency, in accordance with the following procedures:

(1) For any procurement specified in this subsection f, the Chairman or the Executive Director shall solicit quotations, statements or other information regarding their experience, qualifications, and capability to perform the proposed services from no fewer than three firms or persons customarily performing such services. If the procurement is expected to cost \$20,000 or more, such quotations, statements or information shall be in writing; and if more

than \$75,000, a request for qualifications or a request for proposals shall be issued and qualification statements or proposals shall be received. The Chairman or the Executive Director shall recommend in writing to the members of the agency approval of a contract with the person or firm whose quotation or proposal is determined by such procuring officer to be the most advantageous to the agency.

(2) If oral quotations or statements are obtained, the procuring officer shall record the names and addresses of all persons and firms from whom quotations or statements were sought, the names of the individuals and firms submitting quotations or statements, and the date and a summary of each quotation or statement.

g. Marketing — Contracts for marketing, promotional advertising and sponsorship of charitable and civic events shall not be subject to the requirements of competitive bidding or the alternative methods of competition set forth above, provided that the agency shall determine by resolution that such contract is in furtherance of the purposes of the agency.

11. Minority and women business enterprises — The agency shall comply with all applicable legal requirements relating to the hiring of such businesses.

C. Alternate Procurement by City

1. Notwithstanding the procedures set forth in Section B above, any purchase by the agency of city public works or services, or of commodities, equipment or goods, for the use or benefit of the agency, pursuant to a written agreement between the city and the agency for the provision of goods and services by the city to the agency, shall be deemed to be in compliance with the Procurement Policy of the agency, provided that such purchase is made by the city in compliance with law and with the Procurement Policy of the city as if such purchase were made for the city's own benefit or account.

2. The agency hereby adopts and incorporates by reference the Procurement Policy of the city as may be amended from time to time as applicable to any purchase by the city of public works or services, or of commodities, equipment or goods, for the use or benefit of the agency, pursuant to a written agreement between the city and the agency for the provision of goods and services by the city to the agency.

D. General Provisions

1. Input from members of the agency — Comments concerning the procurement policy shall be solicited from the members of the agency from time to time.

2. Annual Review — the agency shall annually review its procurement policies and procedures.

3. Unintentional Failure to Comply — The unintentional failure to comply with the provisions of Section 104-b of the GML shall not be grounds to void action taken or give rise to a cause of action against the agency or any officer thereof.