

## TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

### PROCUREMENT POLICY

#### A. Introduction

1. Scope - In accordance with Article 18-A of the General Municipal Law, Section 104-b of the General Municipal Law ("GML"), the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, the Town of Amherst Industrial Development Agency (the "Agency") is required adopt procurement policies which will apply to the procurement of goods and services not subject to the competitive bidding requirements of Section 103 of the GML and paid for by the Agency for its own use and account.
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 a political subdivision or district, to facilitate the acquisition of goods and services of maximum quality at the lowest responsible cost under the circumstances and to guard against favoritism, improvidence, extravagance, fraud and corruption.

#### B. Procurement Policy

1. Procurement Officer. The Executive Director of the Agency shall serve as the procurement officer for purposes of this Procurement Policy.
2. Determination Required - Prior to commencing any procurement of goods and services, the Executive Director or an authorized designee shall prepare a written statement setting forth the basis for (1) the determination that competitive bidding is not required for such procurement, and, if applicable, (2) the determination 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 such authorized designee in a specially designated procurement file.
3. 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 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 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 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 amounts set forth in the above competitive bidding procedures and whether such procedures shall be followed for said expenditure.
  - c. The Executive Director or such authorized designee shall present any legal issues regarding the applicability of the competitive bidding requirements stated herein to Agency Counsel.<sup>1</sup>
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 county contracts);
  - b. GML, Section 104 (through state contracts);
  - 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 \$20,000.
- a. Up to \$1,000: The discretion of the Executive Director or authorized designee.
  - b. \$1,001 - \$6,000: Documented verbal quotations from at least three vendors.
  - c. \$6,001 - \$20,000: Written/fax quotations from at least three vendors.
6. Procedures for the Purchase of Public Works or Services under \$35,000.
- a. Up to \$1,750: The discretion of the Executive Director or authorized designee.
  - b. \$1,751 - \$8,750: Documented verbal quotations from at least three vendors.
  - c. \$8,751 - \$35,000: Written/fax quotations from at least three vendors.
7. Basis for the Award of Contracts - Contracts will be awarded to the lowest responsible vendor who meets the specifications.

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<sup>1</sup> Adopted January 18, 2008.

8. Circumstances Justifying an Award to Other than the Lowest Cost Quoted.

- a. Delivery requirements;
- b. Quality requirements;
- d. Quality; Past vendor performance;
- e. The unavailability of three or more vendors who are able to quote on procurement<sup>2</sup>; and
- f. 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 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 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 or procurements from sole sources, documentation should include a memo to the file which details why the procurement is not subject to competitive bidding and include, as applicable:
  - i. a description of the facts giving rise to the emergency and that they meet the statutory criteria;
  - ii. a description of the professional services;
  - iii. opinions of Agency Counsel, if any; and/or
  - iv. 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

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<sup>2</sup> Adopted January 18, 2008.

- 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 the citizens. With approval by the Executive Director such emergency shall not be subject to competitive bidding or the 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 item 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.<sup>3</sup>
- d. Single Source — Defined as a situation where, even though two or more vendors are available to supply the required goods or services, the Agency determines that: (i) one particular vendor has unique knowledge or expertise with respect to the required goods, services or project, rendering the use of competitive procedures impractical; and (ii) considering the benefits, the cost to the Agency is reasonable. Approval of the Executive Director after consultation with the officers of the Agency is necessary, which shall be documented in the procurement file along with an explanation of the basis for concluding that a single source procurement was in the best interests of the Agency and the manner in which the Agency identified the selected vendor.
- e. 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.
- f. 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 \$10,000 - written quotations/fax or proposals from at least three agents (if available).
- g. Professional Services - This category includes services which require special education and/or training, license to practice or are creative in nature. Examples of professional services are: lawyers, doctors, accountants, engineers, artists, etc. For the procurement of professional services, the procedures set forth in Exhibit B shall apply.

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

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<sup>3</sup> Adopted January 18, 2008.

12. Input from members of the Agency - Comments concerning the procurement policy shall be solicited from the members of the Agency from time to time.
13. Annual Review - the Agency shall annually review its policies and procedures.
14. Procurement Lobbying Law - The Agency shall follow the applicable provisions of Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 (the "Procurement Lobbying Law"), for any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of \$15,000.<sup>4</sup>
15. 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.
16. Approval Thresholds - The following approval thresholds shall apply to the procurement of all goods and services, except those procurements made under Section 10(a):
  - a. The Executive Director of the Agency is authorized to procure goods and services in an amount up to \$10,000. Prior to procuring such goods or services, the Executive Director shall confer with the Treasurer to confirm that the proposed expenditure is within budgetary limits.
  - b. The procurement of goods and services in an amount greater than \$10,000 shall require the approval of the AIDA Board of Directors. By resolution, the Board may delegate to AIDA executive staff or a committee of the Board the authority to procure goods or services in an amount greater than \$10,000 without Board approval.

Review and Approved: September 16, 2022

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<sup>4</sup> Adopted April 21, 2017.