

COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY
AMENDED 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 County of Westchester 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 County of Westchester (the “County”), 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) 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 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 \$20,000 for the performance of any public works contract (services, labor or construction), and (2) more than \$10,000 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 county 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 Award 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; what method of procurement is specified; and identify the Authorized Contact during the procurement activity.
- 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, purchased under county 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; or
 - (2) a description of the professional services; or
 - (3) written verification of county contracts; or
 - (4) opinions of Counsel, if any; or
 - (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 the 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.

12. The Board hereby adopts the Prompt Payment Policy. (A copy of which is annexed hereto as Exhibit A.)

C. Alternate Procurement by County

1. Notwithstanding the procedures set forth in Section B above, any purchase by the County 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 County and the Agency for the provision of goods and services by the County 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 County in compliance with law and with the Procurement Policy of the County as if such purchase were made for the County's own benefit or account.

2. The Agency hereby adopts and incorporates by reference the Procurement Policy of the County (a copy of which is annexed hereto as Exhibit B) as applicable to any purchase by the County 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 County and the Agency for the provision of goods and services by the County 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.

Approved and adopted this 27th day of June, 2017.

COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY

STATEMENT OF PROMPT PAYMENT POLICY

EXHIBIT A

1. **Authorization** - This Statement of Prompt Payment Policy is adopted by the Members of the Board of the County of Westchester Industrial Development Agency ("COWIDA") pursuant to the provisions of Section 2880 of the Public Authorities Law.
2. **Purpose** - It is the purpose of this Statement of Prompt Payment Policy of the COWIDA to set forth the standards for the payment of bills within specific periods of time and to prescribe interest penalties in situations where payments do not conform to these standards, as provided by section 2880 of the Public Authorities Law.
3. **Prompt Payment Policy** - It shall be the policy of the COWIDA to process contract payments efficiently and expeditiously so as to assure payment in a timely manner to firms and organizations which do business with the COWIDA and to avoid, to the greatest extent practicable, the payment of interest in cases where prompt payment does not occur as provided herein.
4. **Rules and Regulations** – Pursuant to Section 2880 of the Public Authorities Law, the COWIDA promulgated Prompt Payment Policy Rules and Regulations, effective 27th of June, 2017. The Rules and Regulations may be amended from time to time as needed to comply with the Public Authorities Law.
5. **Definitions** - The following terms shall have the following meanings unless the context shall indicate another of different meaning or intent:
 - a. "COWIDA" means the County of Westchester Industrial Development Agency.
 - b. "Designated Payment Office" means the office designated by the COWIDA to which a proper invoice is to be submitted by a contractor.
 - c. "Prompt Payment" means payment of a debt due and owing by the COWIDA before interest accrues thereon pursuant to this Statement of Prompt Payment Policy.
 - d. "Proper Invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price and quantity of goods, property, or services delivered or rendered, in such form and supported by such other substantiating documentation as the COWIDA may reasonably require.
 - e. "Receipt of an Invoice" means (i) the date on which a Proper Invoice is actually received in the Designated Payment Office, or (ii) the date on which the COWIDA, or other entity on whose behalf the COWIDA is acting, received the purchased goods, property, or services covered by the Proper Invoice, whichever is later.
 - f. "Set-off" means the reduction by the COWIDA of a payment due to a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the COWIDA.
6. **Scope** - This Statement of Prompt Payment Policy shall be applicable to all contract payments. A contract payment is a payment to a contractor pursuant to a written contract, or

an amendment thereto, signed by an Authorized Officer of the COWIDA and of the contractor, a fully executed change order or an executed purchase order. A contractor is a person, partnership, private corporation, limited liability company, or association:

- a. selling materials, equipment, or supplies or leasing property, or equipment to the COWIDA;
- b. constructing, reconstructing, rehabilitating or repairing facilities or other improvements for or on behalf of the COWIDA; or
- c. rendering or providing services to the COWIDA pursuant to a contract.

7. **Prompt Payment Procedure** - Each contractor requesting payment shall submit a Proper Invoice and adequate documentation to support the work, services or goods provided to the Designated Payment Office.

- a. Proper Invoices submitted by the tenth of the month will be paid by the last day of the month, but in any event payment will be made no later than 30 days after receipt of such Proper Invoice, unless agreed otherwise.
- b. If a proper invoice is not paid within the periods described in (a) above, such payment will be subject to interest at the overpayment rate set by the Commissioner of Taxation and Finance pursuant to subsection (e) of section 1096 of the Tax Law.
- c. In accordance with subparagraph (v) of paragraph (A) of subdivision 3 of Section 2880 of the Public Authorities Law, when the following facts and circumstances exist, the COWIDA may, to the extent necessary, extend the payment date of a proper invoice to 45 days after receipt. The facts and circumstances may include, but shall not be limited to:
 1. a contract for which a prior overpayment has been made;
 2. a contract which is subject to a mechanics' lien;
 3. a contract which is subject to a notice of prevailing wage withholding;
 4. when the COWIDA has been notified that an entity contracting with the COWIDA or the principals thereof are the subject of criminal investigation or indictment relating to the business activities of the entity;
 5. those instances when the COWIDA has reason to believe that the entity contracting with the COWIDA has provided a false statement or material misstatement in connection with the contract.
 6. when the COWIDA must rely on tests by a third party reported directly to the COWIDA as a prerequisite for payment.

8. **Sources of Funds Available for Payment of Interest** - The COWIDA holds or has control of moneys which represent the proceeds of the issuance of its obligations or are on deposit in operating funds of the COWIDA derived primarily from its fees and charges, from which it may pay interest on Proper Invoices with respect to which Prompt Payment is not made.

9. **Extension of Prompt Payment Date** - The date by which a contract payment may be made without the payment of interest may be extended when any of the following facts or conditions exists:

- a. in accordance with specific statutory or contractual provision, payment must be preceded by an inspection period, the receipt of a signed receiving report in the case of the purchase of goods for an entity other than the COWIDA itself, or by an audit to

determine the resources applied or used by a contractor in fulfilling the terms of the contract;

- b. the necessary state government appropriation required to authorize payment has yet to be enacted;
- c. a Proper Invoice must be examined by the federal government or other governmental entities prior to payment; and,
- d. such date by which contract payment must be made is modified in accordance with section 11 below.

10. Interest Eligibility and Computation - In order for the COWIDA not to be liable for the payment of interest, contract payment must be made within the periods described in section 7 after the receipt of an invoice for the amount of the contract payment due; except when the contract payment is of the type where the facts and conditions are as defined pursuant to section 9 above. Any time taken to satisfy or rectify any of the facts or conditions described in section 9 above shall extend the date by which contract payment must be made in order for the COWIDA not to become liable for interest payments by an equal period of time. The COWIDA shall not be liable for the payment of interest when such interest is less than ten dollars. Notification of Defects - The COWIDA shall have 15 calendar days after receipt of an invoice by the Designated Payment Office to notify the contractor of (a) defects in the delivered goods, property, or services, (b) defects in the invoice, or (c) suspected improprieties of any kind; and the existence of such defects or improprieties shall prevent the commencement of the time period specified in section 7 of this Statement. When the COWIDA fails to notify a contractor of such defects or suspected improprieties within 15 calendar days of receiving the invoice, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the contractor. If the COWIDA, in such situations, fails to provide reasonable grounds for its contention that a defect or impropriety exists, the date by which contract payment must be made in order for the COWIDA not to become liable for interest payments shall be calculated from the date of receipt of an invoice.

11. Predetermined Interval Payments - A Proper Invoice submitted by the contractor shall be required to initiate any payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each such scheduled payment and, for the purposes of determining eligibility for payment of interest and subject to the exception and time-to-rectify provisions of sections 9 and 10 above, the date by which contract payment must be made in order for the COWIDA not to become liable for interest payments shall be the payment due date specified in accordance with the contract.

12. Inapplicability of Statement - The provisions of this Statement shall not apply to payments due and owing by the COWIDA:

- a. under the eminent domain procedure law
- b. as interest allowed on judgments rendered by a court pursuant to any provision of law other than Section 2880 of the Public Authorities Law;
- c. to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including, but not limited to, counties, cities,

towns, villages, school districts, special districts, or any of their related instrumentalists; to any other public COWIDA or public benefit corporation; or to its employees when acting in, or incidental to, their public employment capacity;

- d. in a situation where the COWIDA exercises a Set-off against all or part of the payment due the contractor; or,
 - e. for reasonable cause, determines not to release or reduce retainage upon completion or substantial completion of a construction contract.
13. **Statement Filing** - The COWIDA shall, within 30 days after the adoption of this statement, file a copy of such statement, and amendments thereto, with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.
14. **Contract Incorporation** - The statement in effect at the time of creation of a contract is hereby deemed to be incorporated into and made a part of that contract.
15. **Annual Report**
- a. The COWIDA shall annually prepare a report on the scope and implementation of its Prompt Payment Policy which shall include, but not be limited to:
 1. a listing of the types of categories of contracts which the COWIDA entered into during the 12-month period covered by the report together with a brief indication of whether each type of category of contract was subject to the prompt payment requirements promulgated by the COWIDA and, if not, why not;
 2. the number and amounts of interest payments made for contracts arranged according to each such number category;
 3. the number of interest chargeable days and the total number of days taken to process each late contract payment; and
 4. a summary of the principal reasons that such late payments occurred.
 - b. Within 90 days after the completion of its fiscal year, the COWIDA shall file copies of the report required by paragraph (a) of the section with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.
16. **Public Access** - The COWIDA shall make available to the public, upon a reasonable request therefore, copies of its statement and annual report. Each contractor doing business with the COWIDA shall be given a copy of the COWIDA's statement.
17. **Effective Date** - This Amended Statement of Prompt Payment Policy shall take effect on 27th June, 2017. and shall apply to contracts or purchase orders initially entered into on and after such date.

THE COUNTY OF WESTCHESTER

PROCUREMENT POLICY

EXHIBIT B

Section 1. Statement of Purpose.

This internal policy is intended to ensure, to the extent practicable, that Goods and Services procured by the County of Westchester including procurements on behalf of any County district therein, which are not required by law to be procured pursuant to competitive bidding, must be procured in a manner which:

- i. encourages the prudent and economical use of public monies in the best interest of the taxpayers of Westchester County; and
- ii facilitates the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances; and
- iii guards against favoritism, improvidence, extravagance, fraud and corruption.

Section 2. Determination Required.

Prior to commencing any procurement of goods and services (other than procurements to be awarded pursuant competitive bidding), the procuring officer shall prepare a written statement setting forth the basis for: (i) the determination that competitive bidding is not required for such procurement; and if applicable (ii) any determination that such procurement is not subject to any requirements set forth in this policy. Such written statements shall be maintained by the procuring officer in the procurement file.

Section 3. Application.

(a) This policy shall apply to every procurement by the County of goods and services commenced on or after the date of adoption of this policy, except the following:

- i. procurements made pursuant to General Municipal Law §103, General Municipal Law §104, General Municipal Law §120-w, State Finance Law §175-b, Correction Law §186 or Chapter 836 of the Laws of Westchester County;
- ii. procurements made for the services of a licensed architect, professional engineer or land surveyor licensed and registered in the State of New York pursuant to the Westchester County Administrative Code §277.81 - §277.121.

- iii. transactions or contracts with the United States of America, any State, and any political subdivision, agency or instrumentality thereof;
- iv. contracts for advertising—including public notices;
- v. procurements of insurance or surety bonds;
- vi. procurements of title insurance or title examination services;
- vii. contracts for the services of expert witnesses for use in, or in anticipation of, an adjudicatory proceeding or litigation;
- viii. contracts for medical or health-related services and contracts with healthcare workers, or agencies engaging healthcare workers, including dentists, home health and personal care aides, occupational, speech, and physical therapists, nurses, nurses' assistants, medical and laboratory technicians, diagnosticians, social workers, psychiatric workers and veterinarians;
- ix. contracts with teachers, lecturers and other educational professionals or experts;
- x. procurements for the services of lawyers, other than those specified in (xv.) below, accounts, auditors, financial advisors, and, except for those specified in (ii) above, licensed architects, professional engineers or land surveyors licensed and registered in the State of New York, provided that the County complies with the procedures specified in Section 7;
- xi. any procurement made pursuant to procurement procedures provided for under any other federal or state law applicable to such procurement;
- xii. procurements which involve the expenditure of federal or state assistance where and to the extent that federal or state law, rules or regulations conflict with the provisions of this policy;
- xiii. Any procurement for the purpose of entering into a contract or contracts with not for profit organizations for the support, enhancement, or preservation of cultural resources and the arts;
- xiv. Any procurement for the purpose of entering into a contract or contracts with not for profit organizations for the purposes of providing aid, care and support to persons in need of public assistance; and
- xv. Contracts for the engagement of attorneys for representation in Civil litigation which are approved by an Act of the County Board in accordance with §297.31 of the Laws of Westchester County.

- xvi. Contracts with Recipients for the disbursements of grants or loans under the Community Development Block Grant Program.
- xvii. Any procurement for the purpose of entering into a contract or contracts with persons to provide care, treatment, counseling, referral or rehabilitative or preventative services to the mentally ill, mentally retarded, developmentally disabled and those suffering from the disease of alcoholism or substance abuse.
- xviii. Any procurement for the purpose of entering into a contract or contracts with persons for the creation and support of recreation projects, youth service projects and other appropriate programs and services for the prevention of delinquency and youth crime and the advancement of the moral, physical, mental and social well being of the youth of Westchester County.
- xix. Any procurement for the purpose of entering into a contract with persons to provide direct services to senior citizens including care, counseling, referral, case management, social and nutritional support, and other essential outreach services.
- xx. Contracts with banks and financial institutions licensed or chartered to do business in the State of New York for the deposit of funds, including Trust Fund Agreements, Escrow Agreements and other fiduciary services provided that such agreements shall be consistent with (i) the requirements of applicable law; (ii) any policies now or hereafter established by the Board of Legislators relating to such Agreements.
- xxi. any procurement for which the Board of Acquisition and Contract determines, by resolution passed prior to commencing such procurement, that compliance with this policy would not be in the best interests of the County.

(b) This policy shall not apply to real property leases, licenses and concessions.

Section 4. Definitions.

- (a) The “Bureau” means the Bureau of Purchase and Supply.
- (b) “Person” shall mean any natural person, business, partnership, corporation, association or other organization, entity or group of individuals.
- (c) “Procuring officer” shall mean the head of the department or the individual or individuals authorized by the head(s) of the department(s) undertaking the

procurement and with respect to those matters delegated to the Bureau of Purchase Supply pursuant to Section 161.11(a) of the Laws of Westchester County, the Purchasing Agent.

Section 5. Procurements Below \$75,000.

(a) For a procurement of goods or services reasonably expected to cost less than \$20,000.00, the procuring officer shall exercise sound business judgment and shall endeavor, to the extent time permits, to solicit written or oral quotations from no fewer than three persons customarily providing such goods or services and, if deemed appropriate, to inquire as to the qualifications and experience of such persons. If oral quotations are obtained, the procuring officer shall record the names and addresses of all persons from whom quotations were sought, the names of the individuals submitting quotations, and the date and amount of each quotation.

(b) For a procurement of goods or services reasonably expected to cost less than \$75,000, but at least \$20,000, the procuring officer shall solicit written quotations from no fewer than three persons customarily providing such goods or services and, if deemed appropriate, shall inquire as to the qualifications and experience of such persons. The procuring officer shall record the names and address of all persons from which such written quotations were sought and shall keep copies of all such written quotations received.

(c) The procuring officer shall consider the quotations offered, if applicable, evaluate each offeror's qualifications and experience, and determine the most advantageous offer. Except as otherwise provided in Section 8, the procurement officer shall then recommend in writing to the Board of Acquisition and Contract approval of a contract with the offeror making the most advantageous offer. If the procuring officer recommends an offeror who did not offer the lowest net cost or, if a net revenue is projected, the greatest net revenue, the procuring officer shall, in such recommendation, explain why the proposed contract award furthers the purposes of this policy.

Section 6. Competitive Proposal Procedures.

(a) A procurement of goods or services reasonably expected to cost \$75,000 or more shall conform to the procedures set forth in this section.

(b) The procuring officer shall solicit proposals through a request for proposals. The request for proposals shall include:

- 1) The time and date for receipt of proposals, the address of the office to which the proposals are to be delivered, the maximum time for proposal acceptance by the County; and
- 2) The description of the required goods or services.
- 3) The basis on which the selection will be made, which may be either A) that the proposer meets specified qualification criteria and has proposed the lowest net cost or, if a net revenue is

projected, the greatest net revenue, or in the alternative B) that the proposer has offered the most advantageous proposal based on specified evaluation criteria.

(c) The procuring officer shall open proposals and distribute copies thereof to other persons, if any, designated to assist in the evaluation of the proposals.

(d) The procuring officer shall reject any proposal which does not conform in all material respects to the request for proposals and any proposal from a proposer which does not meet minimum evaluation criteria, if any, established.

(e) After evaluation of all proposals (except those rejected under (d) above), the procuring officer shall rank, in order of preference, all proposers based on either (i) lowest net cost or, if a net revenue is projected, the greatest net revenue or (ii) on the evaluation criteria specified in the request for proposals, whichever method shall have been specified in the request for proposals. The procuring officer shall summarize and record in writing the evaluation of such proposals.

(f) The Procuring officer, with the assistance of the Law Department and such other County Departments as may be appropriate, shall negotiate the essential terms and conditions of a contract with the first ranked proposer (i) at compensation (or, if applicable, with revenue to the County) as set forth in proposer's response to the Request for Proposals, or (ii) if such ranking is based on qualification criteria specified in the Request for Proposals, at compensation which the procuring officer determines is fair and reasonable to the County. In making such determination, the procuring officer shall take into account all relevant factors, including, but not limited to the estimated value of the goods or services to be rendered, the scope, complexity, and nature thereof.

(g) Should the procuring officer be unable to negotiate a satisfactory contract with the first ranked proposer, negotiations with that proposer should be formally terminated. The procuring officer should then undertake negotiations with the second ranked proposer. Failing accord with the second ranked proposer, the procuring officer should terminate negotiations, and then undertake negotiations with the third ranked proposer.

(h) Should the procuring officer be unable to negotiate a satisfactory agreement with the first ranked proposer, s/he shall (i) continue negotiations with additional proposers in rank order until an agreement is reached, or (ii) terminate the procurement process.

(i) After reaching agreement with a proposer, and except as otherwise provided in Section 7, the procuring officer shall then recommend in writing to the Board of Acquisition and Contract approval of a contract with the selected proposer. In such recommendation, the procuring officer shall state the top-ranked proposals in order of preference and shall, if the recommendation is for a proposer who did not offer the lowest net cost or, if a net revenue is projected, the greatest net revenue, explain why the proposed contract award is a prudent and economic use of public moneys in the best interests of the County.

Section 7. Professional Service Procurements.

(a) For any procurement specified in Section 3(a)(x), the procuring officer shall solicit quotations, statements or other information regarding their experience, qualifications and capability to perform the proposed services from no fewer than three 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 procuring officer shall recommend in writing to the Board of Acquisition and Contract approval of a contract with the person whose quotation or proposal is determined by the procuring officer to be the most advantageous to the County.

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

Section 8. Bureau and Medical Center Procurements.

(a) With respect to procurements for the purchase, rental, maintenance or repair of supplies, materials and equipment and services incidental thereto, other than those for the Department of Hospitals, the Bureau of Purchase and Supply shall be responsible for such procurement as provided in Section 161.11(a) of the Westchester County Charter. Any procurement made by the Bureau of Purchase and Supply which is not required to be competitively bid or procured pursuant to any alternative procedures specified in Chapter 836 of the Laws of Westchester County (Purchasing Act) shall be procured by the Bureau of Purchase and Supply in accordance with the requirements of this policy, except that the award of all such contracts shall be made, if at all, by the Purchasing Agent in accordance with the requirements of applicable law, including Chapter 161 and Chapter 836 of the Laws of Westchester County.

After the procuring officer has made a determination of the most advantageous offer on proposal in accordance with the procedures contained in this policy, the Purchasing Agent may award a contract to the person making such offer or proposal, subject to subsection (c) below.

(b) With respect to procurements for the purchase, rental, maintenance or repair of supplies, materials and equipment and services incidental thereto for the Department of Hospitals, the Commissioner of Hospitals or his duly authorized designee shall be responsible for such procurement as provided in Section 161.11(a) of the Westchester County Charter. After the procuring officer has made a determination of the most advantageous offer or proposal in accordance with the procedures contained in this policy, the Commissioner of Hospitals or his duly authorized designee may award a contract to the person making such offer or proposal, subject to subsection (c) below.

(c) If the procuring officer determines that an award should be made to a person who did not offer the lowest net cost or, if a net revenue is projected, the greatest net

revenue, the procuring officer shall make a written determination of why the proposed contract award furthers the purposes of this policy. The procuring officer, in addition to and not in limitation of any other recordkeeping requirements specified in this policy, shall maintain a separate file, available for inspection, containing copies of all such written determinations.

Section 9. Sole Source Procurements.

(a) A procuring officer may recommend to the Board of Acquisition and Contract a contract when, after reasonable investigation, the procuring officer determines in writing that only one practicable source for the required goods or service exists.

(b) The procuring officer shall keep a record all sole source procurements, specifying each contractor's name, the amount and type of each contract, a description of the goods or services procured under each contract, and the basis for the determination that the contractor was the only practicable source for the required supply or service.

Section 10. Accelerated Procurements.

(a) When, due to circumstances which cannot reasonably be avoided, the time required to comply with a requirement of this policy could be construed to affect or endanger the health, safety, or well being of persons or their property, the procuring officer may make an accelerated procurement without following that requirement. The procuring officer in any recommendation for the award of a contract on an accelerated procurement basis, shall first explain the reasons and circumstances requiring such accelerated procurement.

(b) The procuring officer shall keep a record of each accelerated procurement, specifying each contractor's name, the amount and type of each contract, a description of the goods or service procured under each contract, and the basis for determining the need for an accelerated procurement.

Section 11. Procurement Records.

The procuring officer shall maintain a procurement file for each procurement containing, as applicable, a copy of the request for proposals or request for qualifications, copies of responses from all vendors, including proposals, qualification statements or other materials, a copy of any recommendation made, and proposed resolution submitted, to the Board of Acquisition and Contract and any determination or record required in this policy to be made in writing.

Section 12. Required Representation.

The following representation shall be inserted in every contract; or shall accompany any claim or request for payment to be made as a result of a procurement made pursuant to this policy:

_____ (Name) (hereinafter the “Vendor” “Consultant”, etc.) represents and warrants that it has not employed or retained any person other than a bona fide full-time salaried employee working solely for the (“Vendor”, “Consultant”, etc.) to solicit or secure a contract with the County of Westchester for the goods or services specified herein, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full time salaried employee working solely for the (“Vendor”, “Consultant”, etc.) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of such contract.”

Section 13. Federally-Funded Procurements

(a) Definitions

- (i) “Federal Procurement Requirements” shall mean any and all federal laws, regulations, rules, guidance, instructions, or grant terms applicable to a Federally-Funded Procurement.
- (ii) “Federally-Funded Procurement” shall mean a procurement that is funded, in whole or in part, by federal funds.
- (iii) “Ordinary County Procurement Requirements” shall mean all of the policies and procedures that would be applicable to a procurement if it was not a Federally-Funded Procurement.

(b) Each Federally-Funded Procurement shall be made in accordance with the Federal Procurement Requirements.

(c) In addition to, and not in limitation of, the requirements of paragraph (b) of this Section, each procurement:

- (i) funded by the Federal Transit Administration (“FTA”) shall follow all applicable rules and procedures set forth in FTA Circular 4220.1F or any FTA Circular for Third Party Contracting Guidance that should supersede it, including, but not limited to the following, in that each such procurement shall:
 - 1.) not utilize any prequalification of vendors or products;
 - 2.) not utilize any geographic preference;
 - 3.) only be made from a vendor that the Procuring Officer has determined, in writing, is responsible;
 - 4.) for a competitive procurement, be permitted to be awarded on the basis of the FTA’s ‘best value’ criterion;
 - 5.) for a sole source procurement, be documented in accordance with the applicable FTA procedures and requirements;

- 6.) for a procurement below the FTA's 'micro-purchase' threshold, be made in accordance with the applicable FTA procedures and requirements;
 - 7.) for a procurement below the FTA's 'small purchase' threshold, be made in accordance with the applicable FTA procedures and requirements;
 - 8.) for a procurement above the FTA's 'small purchase' threshold, be made in accordance with the applicable FTA procedures and requirements
 - 9.) for a revenue contract, be awarded utilizing competitive selection procedures;
 - 10.) result in a contract that shall include all contract clauses required by applicable FTA rules; and
 - 11.) be documented by the keeping of all records required by applicable FTA rules.
- (d) Notwithstanding paragraphs (b) and (c) of this Section, each Federally-Funded Procurement shall be made in accordance with the Ordinary County Procurement Requirements to the extent that the Ordinary County Procurement Requirements do not conflict with the requirements of paragraphs (b) and (c) of this Section.