

**PROCUREMENT POLICY  
THE CITY OF YONKERS AND SCHOOL DISTRICT**

Section 1. Statement of Purpose

This procurement policy (“Policy”), is intended to ensure that goods and services procured by the City of Yonkers (“Yonkers”), as well as the Yonkers Public Schools (the “School District” and together with Yonkers, hereinafter referred to collectively as the “City”), which are not required by law to be procured pursuant to the competitive bidding requirements of New York State General Municipal Law (“GML”) Section 103 are procured in a manner which, within the framework of the applicable budget:

- (a) encourages the prudent and economical use of public monies in the best interest of the taxpayers; and
- (b) facilitates the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances; and
- (c) guards against favoritism, improvidence, extravagance, fraud and corruption.

Moreover, this Policy is intended to comply with the terms of the Intermunicipal Agreement (“IMA”) by and between the School District, acting by through its Board of Education (the “BOE”) and Yonkers, as filed in the Office of the City Clerk on June 16, 2014, which required, among other things, amendment of certain of the policies and procedures of both Yonkers and the School District.

Section 2. Determination Required

Prior to commencing any procurement of goods and services, the Director (the Director”) of the Purchasing Department (“Purchasing”), in conjunction, to the extent applicable, with the Office of the Corporation Counsel (“Law”), shall make a determination as to whether such procurement must be made in accordance with the bidding requirements of GML 103. If it is determined that the bidding requirements of GML 103 do not apply, then the Director or his designee shall document the reason(s) why competitive bidding is not required and, if applicable, any determination that such procurement is not subject to any requirements set forth in this Policy. As used herein, the term “procuring officer” shall mean the Director or, as applicable, the head of the department or the individual or individuals authorized by the foregoing to undertake the procurement.

Section 3. Application

This Policy shall apply to every procurement of goods and services commenced on or after the date of adoption of this Policy, except procurements made pursuant to the competitive bidding requirements of GML 103 or any procurement made pursuant to

express procurement procedures provided for under any other federal or state law applicable to such procurement.

#### Section 4. Procurements Below \$100,000<sup>1</sup>

(a) For a procurement of goods or services reasonably expected to cost less than \$5,000, the procuring officer shall exercise sound business judgment in order to enter into a contract with the offeror determined to be most advantageous to the City.

(b) For a procurement of goods or services reasonably expected to cost between \$5,000 and \$25,000, the procuring officer shall exercise sound business judgment and shall use best efforts to obtain written or oral quotations from three (3) entities with appropriate qualifications/experience. The procuring officer shall make and retain a sufficient written record of the names, addresses and/or phone numbers of all entities from whom quotations were sought, as well as the date and amount of each quotation received and make a recommendation with the offeror determined to be most advantageous to the City.

(c) For a procurement of goods or services reasonably expected to cost between \$25,000 and \$100,000, the procuring officer shall use best efforts to obtain written quotations from three (3) entities with appropriate qualifications/experience. All entities contacted shall be provided a scope of work/specifications sufficient to provide a written price quote/job estimate.

The procuring officer shall consider the quotations received, evaluate each offeror's qualifications and experience and determine the offer most advantageous to the City. The procuring officer shall take and retain a written record documenting procurement efforts. The procuring officer shall recommend contracting with the offeror making the offer determined to be most advantageous to the City.

#### Section 5. Procurements Above \$100,000

(a) For goods or services reasonably expected to cost more than \$100,000 the procuring officer shall, except as otherwise set forth herein, solicit proposals through a request for proposals ("RFP") process. The RFP shall include:

1. the time and date for receipt of proposals, the address of the office to which the proposals are to be delivered, as well the name of the contact person;
2. a sufficient scope of work/specifications, such as detailed description of the required goods or services; and
3. the criteria on which the selection will be evaluated.

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<sup>1</sup> When determining whether an expenditure falls within any applicable threshold, the procuring officer should consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within any given twelve (12) month period.

(b) The procuring officer shall cause the proposals to be opened and distributed to such other persons designated to assist in its evaluation.

(c) The procuring officer may reject any proposal which does not conform in all material respects to the request for proposals, any proposal deemed insufficient or any proposal by a proposer determined to be not responsible. In the event that the procuring officer determines that no proposal is satisfactory, the procuring officer may reject all proposals and issue a new RFP or abandon the procurement.

(d) After evaluation of all proposals, the procuring officer shall rank, in order of preference, all proposers based on the evaluation criteria specified in the request for proposals the procuring officer shall document said evaluation and ranking.

(e) The procuring officer, with the assistance of Purchasing and/or Law shall negotiate the essential terms and conditions of a contract with the first ranked proposer. Should the procuring officer be unable to negotiate a satisfactory agreement with the first ranked proposer, she/he shall (i) continue negotiations with additional proposers in rank order until an agreement is reached, or (ii) terminate the procurement process.

(f) After reaching agreement with a proposer, and except as otherwise provided herein, the procuring officer shall then recommend in writing approval of a contract with the proposer determined to be most advantageous to the City.

#### Section 6. Exceptions

It is acknowledged that all exemptions to competitive bidding set forth in applicable law apply hereunder, such as when contracting for professional services or services requiring special or technical skill, training or expertise. Likewise, in certain instances, compliance with the Sections 4 and 5 above may not be in the best interest of the City. In those cases the individual or company must be chosen based on accountability, reliability, responsibility, skill, education, and training, judgment, integrity and moral worth. These qualifications do not readily lend themselves to inflexible competitive procurement procedures. Accordingly, the City is exempted from compliance with Sections 4 and 5 hereof in the below circumstances.

Notwithstanding the foregoing, it is acknowledged and agreed that the procuring officer shall comply with the objectives of this Policy as set forth in Section 1 above. To that end the procuring officer shall make and maintain a written record supporting any given recommendation to contract and documenting the efforts made to comply with the objectives hereof. Said record may include market price comparisons or identify the methods used to test the market, such inquiring of other municipalities or districts, use of the Empire State system and so on.

- a) contracts with expert witnesses for use in, or in anticipation of, an adjudicatory proceeding or litigation;
- b) contracts with medical or health-related entities, including without limitation psychiatric workers and veterinarians;

- c) contracts with lecturers, other educational professionals or experts and institutions;
- d) contracts with the following professionals: lawyers; accountants; auditors; financial advisors; information technology advisors; real estate brokers; recruitment agencies for professionals; planners and landscape architects. In the event that a determination is made that seeking competition in the procurement of the foregoing professionals would not be in the best interest of taxpayers, the department head/procuring officer shall provide a memo to the Purchasing Director providing sufficient justification in support of such contract.
- e) 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;
- f) contracts with not for profit organizations for the support, enhancement, or preservation of cultural resources and the arts;
- g) contracts with not for profit organizations for the purposes of providing aid, care, and support to persons in need;
- h) contracts with recipients for the disbursements of grants or loans under the Community Development Block Grant, Emergency Shelter or HOME Programs;
- i) contracts with entities 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 City's youth;
- j) contracts with entities to provide services to senior citizens including without limitation, for care, counseling, referral, case management, social and nutritional support, and other essential outreach services including grant funded contracts;
- k) contracts for advertising, including public notices;
- l) contracts for title insurance or title examination services;
- m) contracts with banks and financial institutions licensed or chartered to do business in the State of New York;
- n) contracts with another municipal corporation to perform services "one for the other" (see GML 119-o, see also the Highway Law);
- o) contracts for real property leases (not inclusive of leases for personal property), licenses and concessions and/or dispositions;
- p) shared services obtained through another municipal entity, such as the County of Westchester. It should be noted that contracts requiring an RFP pursuant to Section 5 above may rely upon an RFP issued such other entity if said procurement is deemed timely and sufficient by the Director, applicable Department head and Law; and
- q) contracts deemed to be in the best interests of the City, any such request for this exemption shall be made by submission of a written recommendation, including sufficient justification by the department head/procuring officer to the Purchasing Director certifying that such exemption is necessary and appropriate in order to further the best

interests of the City. The Board of Contract and Supply (“BOCS”) and/or the BOE, as may be appropriate, has the express authority hereunder to approve or reject any such recommendation, it being recognized that the purpose hereof is always to encourage the prudent and economical use of public monies, while facilitating acquisition of quality goods and services at the lowest cost under and to guard against favoritism, improvidence, extravagance, fraud and corruption.

#### Section 7. Prequalification of Professionals/On-Call Contract List

(a.) Contracts with certain professionals, including but not limited to architects, professional engineers and land surveyors, in addition to any other applicable section hereof, may be procured via the procedures set forth below.

1. A prequalification committee (the “Pre-Qual Committee”) shall be formed consisting of a representative from the applicable Department(s), such as the Department of Public Works, Engineering, etc., as well as a representative from Purchasing, Law and the Mayor’s Office. Said Pre-Qual Committee may prepare a uniform request for qualifications (“RFQ”) form to be distributed and made widely available to interested professionals in the applicable field. Said RFQ should request information sufficient to enable the Pre-Qual Committee to evaluate the professionals, such as area(s) of expertise, previous work/quality of work, typical rates (per job title, unit, etc.) adequacy of personnel/workload capability, financial, and so on.

2. A selection committee (the “Selection Committee”) may be formed, including without limitation, representatives from the applicable Departments and Purchasing, to evaluate the RFQs. The Selection Committee will identify qualified professionals to be included on the eligible list (the “Pre-Qual List”), which list will be maintained by the Director. The eligible list will be updated from time to time, but in no event less than annually, to ensure accurate information and include additional interested qualified professionals.

3. Any Department seeking the services of such a professional may send a request to the Director. The Director and/or Department designee will evaluate the appropriate list and select three (3) eligible professionals. The Director will prepare and distribute a uniform project description to said professionals requesting a written estimated project budget, as well as any additional information deemed necessary and appropriate, such as current staffing/workload. The Director and/or Department designee, along with such other parties as deemed appropriate, shall evaluate the responses received. The procuring officer shall document the results and recommend contracting with the vendor making the offer determined to be most advantageous to the City.

(b) In addition to the foregoing, for procurements of professional services reasonably expected to cost less than \$100,000, the Selection Committee may, based on the results of the RFQ process, recommend that the City enter into one or more contracts with the professionals selected on an on-call/file price basis. The Director will maintain a

list of the on-call contracts. Any Department seeking the services of a professional with an on-call contract may send a request to the Director. The Director and/or procuring officer will evaluate the on-call list and select the eligible professional determined to be most advantageous to the City.

(c) The Director, upon request, shall prepare an annual report for the previous calendar year for submission to the Mayor's Office no later than March 1st, said report shall, at a minimum, list all firms on the Pre-Qual list(s), as well as those firms oncall/file price contracts hereunder.

#### Section 8. Emergency Procurements

Pursuant to GML Section 103(4), it is recognized that certain contracts must be procured immediately in order to protect City property from further loss or damage or prevent or minimize serious disruption in City services, and a delay in order to seek alternate offers may threaten public life, health, safety or welfare. This section does not preclude alternate proposals if time permits. In the event of such an emergency the procuring officer shall complete the emergency certification form which form shall be forwarded to the Director as soon as possible after the procurement to advise of said emergency procurement. The Director will advise BOCS of any such procurement at the next practicable meeting.

#### Section 9. Sole Source Procurements

A procuring officer may recommend awarding a contract when, after reasonable investigation, the procuring officer determines that only one practicable source for the required goods or service exists. The procuring officer shall document such sole source procurement, specifying the contractor's name and the basis for the determination that the contractor was the only practicable source for the required supply or service.

#### Section 10. Miscellaneous

(a) Records. Procurements hereunder shall be documented and shall include all applicable records (created or received), as well justification for any recommendation made. Electronic or PDF copies of any such records are acceptable. Such written records shall be maintained in the procuring officer's files and/or forwarded to the Director for retention.

(b) Number of Responses. In the event that the identified number of quotations or proposals are not received the procuring officer should use sound business judgment to determine if additional efforts are required to meet the objectives hereof. If the procuring officer determines that such additional efforts will not further this Policy a statement shall be included in the recommendation explaining such determination.

(c) Scope of Work/Services. To encourage competition and a level playing field the procuring officer shall ensure that all entities solicited are given the same information and updates thereto, if any.

(d) Negotiation. If the City is unable to successfully negotiate an agreement with a firm, individual or professional selected hereunder, the City may commence negotiations with the next ranked firm, individual or professional.

(e) Most Advantageous Offer or Best Value. 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 document in writing why the proposed contract award furthers the purposes of this Policy. In assessing an offer, a best value standard may be used, which includes analysis of non-price factors such as the reliability of a product, efficiency of operation, difficulty/ease of maintenance, useful lifespan, ability to meet needs regarding timeliness of performance, and experience of a service provider with similar contracts. The procuring officer's written procurement records must reflect such analysis.

It is acknowledged that, in accordance with GML 103(16), in addition to letting contracts to the lowest responsible bidder, the School District, following adoption hereof by resolution, may let bid contracts on the basis of "best value" and the City may let bid contracts effective as of adoption of a Local Law permitting same.

(f) Green Purchases. Energy efficiency may be considered as a part of a "best value" analysis. In addition, in recognition of the long term benefits, the City and School District are permitted by law to provide a preference for "recycled products."

(g) School District Requirements. It is expressly acknowledged and agreed that the School District, pursuant to law, is subject to certain special requirements, such as all "elementary or secondary schools" must follow guidelines established by the OGS for "environmentally-sensitive cleaning and maintenance products" that are available in the form, function and utility generally used by schools in their facilities. Nothing herein shall be interpreted to contravene such requirements.

Notwithstanding any other provision of law or hereunder, the BOE shall have the authority to include in the internal policies and procedures governing procurement of apparel or sports equipment, where such procurement is not required to be made pursuant to the competitive bidding requirements of GML 103, a prohibition against the purchase of apparel or sports equipment from any vendor based upon either or both of the following considerations: (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor; or (b) the bidder's failure to provide information sufficient for boards of education to determine the labor standards applicable to the manufacture of the apparel or sports equipment.

(h) Evaluations. The City reserves the right to apply the case law and interpretations developed under GML §103 in connection with evaluation of submissions

hereunder, including without limitation, with respect to determining whether a proposer is a responsible vendor.

(i) Forms. All RFPs and RFQs shall contain a statement of non-collusion and a disclosure form or background questionnaire, which must be reviewed by the procuring officer in connection with evaluation of the submission.

(j) Approvals. Contracts proposed in accordance herewith remain subject to receipt of all applicable approvals, including without limitation, that of the City Council, BOCS and/or BOE.

(k) Preferred Source. In order to advance “special social and economic goals,” which accords certain providers with “preferred source” and pursuant to New York State Finance Law (see Section 162) it is expressly acknowledged that procurements of commodities and/or services, when available in the “form, function and utility” required by the City or School District are required to be made from preferred sources and are not subject to competitive procurement requirements.

(l) Electronic Submission. In accordance with New York State law electronic submission of bids (pursuant to GML 103), RFPs and RFQs is hereby expressly permitted.

(m) Compliance with Law. Except for procurements made pursuant applicable law including, without limitation the GML, NYS Finance Law or Correction Law, it is expressly acknowledged that alternative proposals or quotations for goods and services shall be secured by use of written requests for proposals, written quotations, verbal quotations or any other method of procurement in accordance herewith.

The unintentional failure to comply with the provisions hereof or the GML will not be grounds to void the transaction or give rise to a cause of action against the City or School District or any of their respective officers, elected officials or employees.

If any provision hereof is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the Policy shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable.

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