

**TOWN OF NORTH HEMPSTEAD SOLID WASTE MANAGEMENT
AUTHORITY**

PROCUREMENT POLICY

The Town of North Hempstead Solid Waste Management Authority (the "Authority") was created as a public benefit corporation, pursuant to Article 8, Title 13-F of the Public Authorities Law (the "Enabling Act"), to carry out its purpose of benefiting the people of the Town of North Hempstead by dealing with solid waste and any products or by-products thereof. Among the powers granted to the Authority under the Enabling Act is the power to make contracts and to execute all necessary and convenient instruments to further the Authority's stated public purpose. The only provision in the Enabling Act which specifies a required procurement procedure is that found in Public Authorities Law Section 2049-q which addresses "construction contracts". In general, there are no statutory requirements for public authorities to competitively bid procurement contracts. While there are no statutory or common law requirements for a public benefit corporation to make purchases, such as equipment purchases through public bidding, it is the practice in the past and now it will be the formal policy of this Authority to actively solicit competition for such procurements. Whether competition is solicited pursuant to a formal competitive bidding process or a less formal method such as obtaining proposals or verbal or written quotations, will depend upon the nature of the particular purchase. By promoting the competitive securing of goods, equipment and services, the Authority will assure the prudent and economic use of public monies in the best interests of the citizens of the Town of North Hempstead and will facilitate the acquisition of goods, equipment and services of maximum quality at the lowest possible cost under the circumstances. It is also the intention of this Policy to guard against favoritism, improvidence, extravagance, fraud and corruption, and, wherever possible within existing laws, to promote and support local businesses and industry. The implementation of this voluntary purchasing policy will foster a *greater* degree of public accountability on the part of the Authority and those involved in the procurement process and will provide greater assurance that procurements will be based upon the best interests of the citizens of the Town of North Hempstead.

POLICY FOR THE PROCUREMENT OF GOODS, EQUIPMENT AND SERVICES FOR THE TOWN OF NORTH HEMPSTEAD SOLID WASTE MANAGEMENT AUTHORITY

The Board of the Town of North Hempstead Solid Waste Management Authority (the "Authority Board") has hereby formally adopted the following written policies applicable to all purchases of goods, equipment and services, including construction services, by Resolution of the Authority Board. This Policy is meant to actively promote competitive procurements of all goods, equipment and services, with limited exceptions, as set forth herein. Authority staff is hereby directed to comply with this Policy and to retain the necessary documentation as required herein to substantiate such compliance.

CONSTRUCTION CONTRACTS

Except as set forth herein, all contracts or orders for work, material or supplies performed or furnished in connection with construction shall be awarded by the Authority pursuant to a Resolution of the Authority Board. Such awards, when applicable, shall be made in compliance with Paragraph (e) of Subdivision 4 and Subdivision 7 of Section 120-w of the General Municipal Law. In any such construction contract, the Authority may provide a program for the payment of damages for delays and incentive awards in order to encourage timely project completion. An action, suit or proceeding contesting the validity of a contract awarded pursuant to this section, or the validity of the procedures relating to such award, shall be governed by the provisions of Subdivision 6 of Section 120-w of the General Municipal Law and the term "municipality" as used in such Subdivision 6 shall mean the Authority.

The person whose bid or proposal is accepted shall give security for the faithful performance of the contract, and such other security as the Authority may require, and may be required to maintain any construction done under the contract for such period as shall be stipulated, all in the manner prescribed and required by this Authority and the sufficiency of such security shall, in addition to the justification and acknowledgment, be approved by the Authority's Executive Director (the "Executive Director"). All bids or proposals shall be publicly opened by the Authority Board or its duly authorized staff. If the person whose bid or proposal has been accepted after advertising shall neglect or refuse to accept the contract within five working days after written notice that the contract has been awarded to him on his bid or proposal, or if he/she accepts but does not execute the contract and give proper security, the Authority shall have the right to declare his/her deposit forfeited.

In case any work shall be abandoned by any contractor, the Authority may, if it determines that the public interest is thereby served, adopt on behalf of the Authority any and all subcontracts made by such contractor for such work and all such subcontractors shall be bound by such adoption, if made.

No bid or proposal shall be accepted from or any contract awarded to any person or corporation who is in arrears to the Authority or the Town of North Hempstead upon any obligation of the Authority or the Town of North Hempstead. Every contract when made and entered into, as herein provided for, shall be executed in duplicate, one copy which shall be held by the Authority and one copy which shall be delivered to the contractor. The provisions of this section shall supersede any inconsistent provisions of the General Municipal Law or any other general, special or local law or the charter of the Town.

PURCHASES OF GOODS, EQUIPMENT AND SERVICES

Competitive Sealed Bids

Except as otherwise expressly provided herein, all purchases of goods, equipment and services by the Authority involving an expenditure of more than \$25,000.00 and all other such purchase contracts involving an expenditure of more than \$25,000.00 shall be made pursuant to an open competitive bidding process as set forth herein and shall be awarded to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided for by this Policy. In any case where a responsible bidder's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by the Authority, the gross price shall be reduced by the amount of such allowance, for the purposes of determining the low bid. In cases where two or more responsible bidders furnishing the required security, submit identical bids as to price, the Authority Board may award the contract to any of such bidders. The Authority reserves its discretion to reject all bids and re-advertise for new bids in the manner provided for in this Policy. The Authority Board shall approve any such contract with a value in excess of \$50,000.00.

For purchases of goods, equipment or services over \$5,000.00, but less than \$25,000.00, the Executive Director, or his or her designee, shall obtain three or more written quotes, whenever possible, and shall document and retain those quotes for a period of at least two years.

For purchases of goods, equipment or services involving a total purchase price of less than \$5,000.00, the Executive Director, or his or her designee shall, whenever possible, obtain at least three verbal or telephone quotes from different vendors and document the substance of those quotes, and specifics (i.e., vendor name, date, time, contact person, reasons) for those not choosing to quote. Documentation of quotations is required. For non-recurring small purchases, at levels of less than \$1,000.00, competitive quotes are not required.

Competitive Negotiations

Notwithstanding any otherwise applicable provisions of this Policy, the Authority may award contracts for purchases of goods, equipment and services

involving expenditures of more than \$25,000.00 through a competitive negotiations process if the Executive Director determines in writing that competitive sealed bids for the award of any such contract, as set forth herein, is not practicable. In making a determination as to the practicability of competitive sealed bidding for purposes of this Policy, the Executive Director shall consider all factors he or she deems relevant to the particular contract award, including, but not limited to, the following:

- (1) Whether specifications can be prepared that permit award on the basis of either the lowest qualified bid price or the lowest qualified evaluated bid price;
- (2) Whether the available sources, the time and place of performance, and other relevant circumstances are appropriate for the use of competitive sealed bidding;
- (3) Whether the contract is expected to involve combined, multiple, complex or diverse services or elements of performance that lend themselves to an evaluation of offers on a basis other than lowest qualified bid price or lowest qualified evaluated bid price;
- (4) Whether judgment is required in evaluating competing proposals and it is in the best interest of the Authority to require a balancing of price, quality, experience and other factors, and
- (5) Whether clarification, development and negotiation of the terms and conditions of the contract are necessary or desirable to achieve the Authority's goals in the transaction.

Competitive Negotiation Process - Procedures

In undertaking a competitive negotiation process for the award of a contract pursuant to this Policy, the Executive Director shall comply with the following procedures:

- (1) A request for proposals shall be developed which shall indicate the relative importance of price and other evaluation factors, and any information deemed appropriate by the Executive Director;
- (2) The request for proposals shall also contain a description of the evaluation and selection procedures which shall be followed in awarding the contract, including procedures which govern written or oral discussions with proposers, the proposal clarification process, concurrent or sequential negotiations, discontinuance and resumption of negotiations and rights reserved to the Authority;

- (3) Adequate public notice of the request for proposals shall be given in the manner provided in the Section entitled "Advertisement of Proposals"; and
- (4) Award shall be made to the responsible proposer whose proposal is determined in writing to be the most advantageous to the Authority, taking into consideration price and non-price evaluation factors set forth in the request for proposals.

The Authority Board shall approve any such contract with a value in excess of \$50,000.00.

Construction, Reconstruction and Repairs

Contracts involving construction, reconstruction, maintenance or repair activities otherwise not covered under "Construction Contracts" above shall be subject to the requirements set forth herein for purchases of goods, equipment and services.

PROFESSIONAL SERVICE CONTRACTS

Contracts which require professional methods, character or standards or require a State license to practice, or special skill and training or which may be creative and specialized in nature are considered to be professional service contracts. Such services shall be exempt from the Competitive Sealed Bids and Competitive Negotiations provisions set forth above. The Authority may procure professional services on a negotiated basis, and may request such information as the Executive Director deems appropriate to select the most qualified firm for a reasonable fee.

REQUEST FOR PROPOSALS AS AN ALTERNATIVE PROCUREMENT PROCESS

Notwithstanding any other provision set forth herein and in accordance with the Enabling Act and other applicable law, the Authority may contract for goods and services, including design, construction and operation services, through a request for proposal procurement process. Any such request for proposals procurement process shall provide for the evaluation of proposals received in response to such request for proposals and the awarding of the contract to the selected proposer on factors other than price. Such factors may include technical merit, proposer qualifications and the proposed business arrangement. The Authority may make a contract award to any responsible proposer selected pursuant to this provision based on a determination that the selected proposal is most responsive to the request for proposals and may negotiate the terms of the contract with any proposer.

EXECUTION OF CONTRACT OR AGREEMENT

Notwithstanding any other provision set forth herein, no contract,

agreement, bid or proposal awarded by the Authority shall be binding and valid until executed by the parties.

LEASE ARRANGEMENTS

Leases of equipment shall also be awarded after a competitive process. Authority staff shall obtain formal written quotations or proposals from three or more vendors for any lease involving in excess of \$25,000.00 annually. For leases involving in excess of \$25,000.00 annually, staff shall obtain written quotations or proposals setting forth the particulars as to the equipment or space to be provided and details as to cost, on an annual and total lease basis, which may be used for evaluation of the proposal. The lease shall also include details as to additional cost beyond the base lease amount necessary to properly evaluate the equipment to be leased prior to award to the successful vendor. For leases involving an annual total lease expense of less than \$25,000.00, Authority staff shall secure at least three informal quotes, whenever possible, and perform the same evaluation before making a recommendation to the Executive Director relative to the selection of a lessor for the equipment to be leased. Any lease of real property shall be exempt from the provisions of this Policy, and shall be procured under an alternative procurement policy approved by the Authority Board.

SOLE SOURCE

It is the policy of the Authority to promote competition in the procurement process, whenever possible. Toward that end, the Authority will not specify the product of a certain manufacturer to the exclusion of all other comparable products, except where such a designation is required for the public interest, such as where local geographic, atmospheric or other conditions require the use of the, and only the type of, equipment specified. Where the Authority specifies a particular article or type of equipment which it regards as its general standard, it will provide that any other manufacturer of similar equipment may meet the specifications if his or her product is reasonably equivalent to that mentioned as the standard. Only in those instances where the Authority is required to secure equipment or service from a sole source, may a purchase of such items or service be made without a competitive procurement process.

WAIVER OF COMPETITION

The Authority Board may waive the use of the competitive procedure for procurement contracts provided in this Policy based upon one or more of the following findings:

- (1) A condition exists that makes it impractical or not in the Authority's best interest to seek competition due to the specialized nature of the goods or services required.
- (2) There is a historical relationship, the continuation of which is in the best interests of the Authority.

- (3) There is a need for confidentiality.
- (4) The proposed project requires specialized knowledge of, or proximity to, the Authority.
- (5) There is a requirement for which, in the sole opinion of the Authority, there is a lack of responsible competition to perform the desired services.
- (6) There is a specific contractor selection that is necessary or convenient to the operations of the Authority.

EMERGENCIES

Notwithstanding any of the other provisions in this Policy, in the case of a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting Authority buildings, Authority property or the life, health, safety or property of Authority employees, customers or the general public require immediate action which cannot await a competitive process or competitive bidding, contracts for public work or the purchase of supplies, materials or equipment or services may be let by the Chairman, Treasurer, Executive Director, or Authority Board by immediate contract and the Executive Director may temporarily dispense with the competitive bidding or procurement requirements set forth herein. However, a good faith emergency must exist and while the emergency purchases do not require competitive bidding, it is nevertheless the policy and procedure of this Authority that such purchases must, wherever possible, be made in light of the nature of the emergency and the goods, equipment and services to be provided for a reasonable cost, and in the best interest of the Authority. The term of any contract entered into due to the occurrence of an emergency as set forth herein, shall be for a length of time deemed reasonable by the Executive Director taking into consideration the nature of the emergency and the goods, equipment and services to be provided, including the costs related thereto.

STANDARDIZATION

Standardization should be utilized only where there are strong reasons of efficiency or economy. It is the Authority's policy that it will not specify the product of a certain manufacturer to the exclusion of all other comparable products except where such a designation is required for the public interest. Although the Authority may specify a particular article or type of equipment which it regards as its general standard, it should provide that any other manufacturer of a similar object may meet the specifications if his or her product is reasonably equivalent to that mentioned as the standard.

SURPLUS AND SECOND-HAND SUPPLIES

Surplus and second-hand supplies, material or equipment may be purchased by the Authority without competitive bidding from the Federal Government, the State of New York or from any other political subdivision, district or public benefit corporation.

PURCHASES THROUGH TOWN, COUNTY OR STATE

Notwithstanding the provisions of this Policy, the Authority is authorized to make purchases of material, equipment or supplies, when available, utilizing the Town, County or State's existing, current competitive procurement lists directly, and the Executive Director may make such purchases he deems appropriate. The sole exception is in the instance where bids have already been received by the Authority for the purchase by the Authority of the material, equipment or supplies, and such purchase cannot be made upon the same terms, conditions and specifications and at a lower price through the Town, County or State. When there are multiple local vendors for the same product at the same price under these Town, County or State contract lists, it is Authority policy to distribute purchases among all of these vendors and thereby equitably distribute business opportunities to as many vendors as practical.

INTER-AGENCY AGREEMENTS

The Authority may enter into agreements with the Town, municipalities, public benefit corporations, public corporations, state agencies, and agencies of the Federal government pursuant to the authority set forth in its Enabling Act, and such agreements shall be exempt from the requirements of this Policy.

ADVERTISEMENT AND OPENING OF BIDS

Advertisements for bids shall be published in the official Authority newspapers designated for such purpose. Such advertisement shall contain a statement of the time and place where all bids received, pursuant to such notice, will be publicly opened and read. Authority staff may also take all such additional measures as possible to maximize the response to the bid and thereby increase competition. The Executive Director, or his or her designee, shall open the bids at the time and place specified in the notice. The Executive Director, or his or her designee, shall make a record of such bids in such form and detail as may be necessary for meaningful review. All bids received shall be publicly opened and read at the time and place so specified. At least ten business days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of the bids.

ADVERTISEMENT OF PROPOSALS

Except for any contract awarded pursuant to Section 120-w of the General Municipal Law, including the notice requirements of Subdivision 2 of Section 120-w of the General Municipal Law, advertisements for a request for proposals issued pursuant to a Competitive Negotiation process as set forth above shall be published in the official Authority newspapers designated for such purpose. Such

advertisement shall contain a statement of the time and place where proposals will be received. Authority staff may also take all such additional measures as possible to maximize the response to the request for proposals and thereby increase competition. At least ten business days shall elapse between the first publication of such advertisement and the date so specified for receipt of proposals.

BID OR PROPOSAL MISTAKE

A bidder or proposer may correct, modify or withdraw a bid or proposal by written notice received by the Executive Director, or his or her designee, prior to the time and date set for the receipt of bids or proposals. For any bids or proposals received by the Authority, the Executive Director, or his or her designee, may waive minor informalities or allow the bidder or proposer to correct them.

BID/PROPOSAL PROTEST PROCEDURES

(1) Introduction

(a) The following procedures shall apply to all procurements conducted by the Authority.

(b) All actual or prospective bidders, proposers or offerers whose direct economic interest would be affected by the award of, or failure to award, a contract shall be deemed "Interested Parties" for the purposes of these procedures. Protests regarding procurements will only be accepted from Interested Parties.

(c) All protests shall be filed in writing with the Executive Director, and shall be addressed as follows:

Executive Director
Town of North Hempstead
Solid Waste Management Authority
802 West Shore Road
Port Washington, NY 11050

(d) A protest found by the Authority to be patently without merit or not brought in a timely manner may be rejected without further consideration. Protest submissions should be factual, complete, concise, logically arranged and clearly state all grounds for the protest. All protests must include the following information:

- Name, address, telephone and facsimile number of protestor and designated contact person for purposes of the protest;
- Solicitation or contract number which is the subject of the protest;
- Detailed statement of the legal and factual grounds of the protest, including copies of relevant documents;

- Basis for the protester's status as an Interested Party;
- Date on which the protestor first learned of the alleged improprieties, if applicable; and
- Statement as to what relief is requested.

(e) If the Authority finds that none of the conditions set forth in Section (1)(d) apply, and a protest is timely filed pursuant to the provisions set forth in Section (2), below, the Authority will cease all further actions regarding a procurement until the protest is decided. Therefore, while such a protest is being decided, the Authority will not open bids or proposals, or award the contract if such steps have not already been taken. The Authority may, in its discretion, accept further bids or proposals to be held unopened until the protest is decided.

(f) False statements or accusations of impropriety for which the protestor fails to offer a reasonable factual basis may be grounds for a rejection of a protest.

(g) Compliance with the Bid/Proposal Protest Procedures shall be a condition precedent to the filing of any legal challenge regarding procurement by the Authority.

(2) Time for Filing Protests

(a) Protests Regarding Specifications

Protests that are based upon claims by any Interested Party that the specifications are in any way ambiguous, incorrect, incomplete, or unduly restrictive, must be filed in accordance with Section (1)(c) of these Procedures so that the Authority receives the protest no later than fourteen (14) business days prior to the closing date for receipt of initial bids or proposals.

(b) Protests Regarding Alleged Improprieties in Solicitation

Protests that are based upon claims by any Interested Party that there are improprieties regarding any type of solicitation, other than those governed by Section (2)(a), above, must be filed in accordance with Section (1)(c) of these Procedures so that the Authority receives the protest within five (5) business days following the date on which the Interested Party learned of the alleged improprieties, and no later than seven (7) business days prior to the bid or proposal opening date.

(c) Post-award Protests

Protests that are based upon alleged improprieties in any type of

solicitation which are not apparent before the time periods set forth in (2)(a) and (2)(b), above, must be filed in accordance with Section (1)(c) of these Procedures so that the Authority receives the protest no later than two (2) calendar weeks after receipt of notification of the identity of the apparent low bidder or of the apparent successful proposer. Late protests may, for good cause shown, be considered by the Authority in its discretion.

(d) Notice for Post-award Protests

Where a Contract has already been awarded at the time a protest has been filed, the Authority shall provide written notice of the protest to the Contractor that received the contract award. The Authority shall also provide a copy of the protest to that Contractor.

(3) Authority's Response to Protests

(a) An award of a contract prior to the protest determination may be made when the Authority determines that:

- The items or services to be procured are urgently required; or
- Delivery or performance will be unduly delayed by failure to make the award promptly; or
- Failure to make prompt award will otherwise cause undue harm to the Authority; or
- The Authority determines that the process for making a determination will involve an investigation that may become lengthy.

(b) The Executive Director, or his or her designee, will give written notice to the protestor when a decision has been made by the Authority to proceed with the award prior to the protest determination pursuant to Section (3)(a), above.

(c) The Executive Director, or his or her designee, will issue a written response to each protest addressing the material issues raised by the protestor. The Authority's decision will be final and binding.

RECYCLED PRODUCTS

All products purchased by the Authority shall be recycled products, which meet contract specifications, unless the only available product does not contain recycled content, and provided that the cost of the recycled product does not exceed a cost premium often a percent above the cost of a comparable product that is not a recycled product or, if at least fifty percent of the secondary material utilized in the manufacture of that product are generated from the waste stream in New York state, the cost of the recycled product does not exceed a cost premium of fifteen percent above the cost of a comparable product that is not a recycled product. For the purpose of this section,

"recycled product" shall mean, any product which has been manufactured from "secondary materials", as defined in Subdivision 1 of Section 261 of the Economic Development Law, and which meets the requirements of Subdivision 2 of Section 27-0717 of the Environmental Conservation Law and regulations promulgated pursuant thereto.

SUPPORT FOR MINORITY-OWNED, WOMEN-OWNED, AND SMALL BUSINESSES

The Authority expresses its support to encourage contracts with minority-owned, women-owned, and small businesses when awarding contracts in purchasing goods, equipment and services. Hereunder, the Authority will not discriminate, against any person who is qualified and available to perform the work by reason of race, color, creed, gender or national origin. The Authority will encourage active participation by minority-owned, women-owned and small businesses in its procurement process, including reviewing and referencing any available lists of such vendors and actively and affirmatively soliciting their participation through letter and telephone advisement of the coming procurement, and will fully support equal opportunity and fair treatment of all people in its contracting. For the purposes of Article 15-A of the Executive Law only, the Authority shall be deemed a "state agency" as that term is used in such article, and its contracts for design, construction, services and materials shall be deemed "state contracts" within the meaning of that term as set forth in such Article.

LEGAL REVIEW

Contracts may only be executed after appropriate legal review by the Authority Counsel or any special counsel so designated.

STATEMENT OF NON-COLLUSION REGARDING BIDS AND PROPOSALS SUBMITTED TO AUTHORITY

Every bid or proposal hereafter made to the Authority, for work, goods, equipment or services shall contain the following statement subscribed by the bidder or proposer and affirmed by such bidder or proposer as true under the penalties of perjury:

- (1) By submission of this [bid or proposal], each [bidder or proposer] and each person signing on behalf of any [bidder or proposer] certifies, and in the case of a joint [bid or proposal] each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
 - (a) The prices in this [bid or proposal] have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other [bidder or proposer] or with any competitor;

- (b) Unless otherwise required by law, the prices which have been quoted in this [bid or proposal] have not been knowingly disclosed by the [bidder or proposer] and will not knowingly be disclosed by the [bidder or proposer] prior to opening, directly or indirectly, to any other [bidder or proposer] or to any competitor; and
 - (c) No attempt has been made or will be made by the [bidder or proposer] to induce any other person, partnership or corporation to submit or not to submit a [bid or proposal] for the purpose of restricting competition.
- (2) A [bid or proposal] shall not be considered for award nor shall any award be made where (1)(a), (b) and (c) above have not been complied with; provided however, that if in any case the [bidder or proposer] cannot make the foregoing certification, the [bidder or proposer] shall so state and shall furnish with the [bid or proposal] a signed statement which sets forth in detail the reasons therefore. Where (1)(a), (b) and (c) above have not been complied with, the [bid or proposal] shall not be considered for award nor shall any award be made unless the Executive Director, or his or her designee, determines that such disclosure was not made for the purpose of restricting competition.

ETHICS AND CONFLICT OF INTEREST

Each successful bidder or proposer or quoter under this Policy who will supply the Authority with work, goods, equipment or services shall submit to the Authority, prior to acceptance of the contract relative thereto, a statement on an Authority standard form indicating that the contractor, its officers and employees do not have a conflict of interest relative to supplying the work, goods, equipment or services to be provided. Pursuant to the Enabling Act, it shall be a misdemeanor for any member of the governing body or any officer, agent, servant or employee of the Authority to be in any way or manner interested, directly or indirectly, in the furnishing of work, materials, supplies or labor, or in any contract therefore which the Authority is empowered by its Enabling Act.

GRANT FUNDS

Any procurement procedures required to be followed by the Authority as a condition of the receipt of any grant awarded to the Authority shall supersede any provision to the contrary set forth in this Policy.

ANNUAL REVIEW

The Executive Director shall annually review this Policy and make recommendations to the Authority Board relating thereto as he or she deems appropriate.