

# **TOWN OF NORTH HEMPSTEAD COMMUNITY DEVELOPMENT AGENCY PROCUREMENT POLICY AND PROCEDURE**

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## **Article I. Introduction**

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Section 1.01 Under New York State Public Authorities Law § 2824, the Town of North Hempstead Community Development Agency (the “Agency”) is required to establish and adopt a procurement policy that will apply to the procurement for goods and services paid for and used by the Agency. The primary objectives of this Procurement Policy (the “Policy”) are:

- (a) To assure the prudent and economical use of public monies in the best interests of the taxpayers in the Town of North Hempstead,
- (b) To facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and
- (c) To guard against favoritism, improvidence, extravagance, fraud, and corruption.

Section 1.02 Agency procurement policies and procedures are controlled by both federal and New York State (“State”) law. As a subrecipient of federal funds from the United States Department of Housing and Urban Development (“HUD”), the Agency is subject to the procurement provisions of the Code of Federal Regulations (“CFR”) 2 CFR 200.317-200.325 (Federal Procurement Standards).

Section 1.03 Additionally, under General Municipal Law §554-a, except as otherwise provided by acts of the New York State Legislature, “...provisions of state and local law applicable to the letting of public works and purchase contracts by the municipality for which an agency is established shall apply to the same degree and extent to such agency....”

Section 1.04 If applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies. When presented with conflicting state and federal procurement rules and regulations, the Agency should choose and follow the more restrictive rule or regulation.

Section 1.05 Board Approval of Procurement Actions. The Board reviews and approve this Procurement Policy on an annual basis following the NYS Authorities Budget Office requirements.

Section 1.06 Contracting Officer and Delegation of Contracting Authority.

- (a) The Executive Director serves as the Contracting Officer (“Contracting Officer”). It is the responsibility of the Executive Director to make sure that all procurement actions are conducted with the policies contained herein. The Executive Director shall provide notice to the Board of all procurement solicitations in the Executive Director’s report.
- (b) The Executive Director may delegate procurement authority as is necessary and appropriate to conduct the business of the Agency. In the Agency, the Assistant Executive Director generally procures contracts and professional services, and the Administrative Assistant generally procures office supplies and office equipment.
- (c) The Executive Director shall establish operational procedures where necessary (such as a procurement manual or standard operating procedures) to implement this Policy. The Executive Director shall also establish a system of sanctions for violations of the ethical standards described below, consistent with Federal, State, or local law

## Article II. Conflicts of Interests.

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Section 2.01 Under GML § 883 and 2 CFR § 200.318, the Agency must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of grants. The Agency must also maintain written standards of conduct covering organizational conflicts of interest if the Agency has a non-governmental affiliate or subsidiary organization. The Agency currently does not have either an affiliate or subsidiary organization, as defined by HUD.

Section 2.02 The Agency adopts the Town of North Hempstead Code of Ethics (Chapter 16A) as the Agency's written code of standards of conduct governing the performance of its employees engaged in the award and administration of contracts. The Agency may submit requests to the Office of the Town Attorney for a determination regarding ethics or conflict of interest.

Section 2.03 No employee, officer, or agent of the Agency shall participate in the selection or the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest or a tangible personal benefit from a firm considered for a contract:

- (a) An employee, officer, or agent, must be excluded from participating in the selection, award, or administration of a contract supported by a Federal award when the employee, officer, or agent, any member of his/her immediate family<sup>1</sup>, his or her partner, or an organization which employees or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.
- (b) The Agency's officers, employees, or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. The Agency may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value.
- (c) To the extent permitted by state or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Agency's officers, employees, or agents, or by contractors or their agents.
- (d) The awarding agency may, in regulation, provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Section 2.04 The Agency does not have a non-governmental affiliate or subsidiary organization. HUD has the following definitions:

- (a) An **affiliate** is a non-governmental entity, other than an instrumentality, formed by an Agency and in which an Agency has a financial or ownership interest or participates in its governance. The Agency has some measure of control over the assets, operations, or management of the affiliate, but such control does not rise to the level of control to qualify the entity as an instrumentality.

- (b) A **subsidiary organization** is an instrumentality/ non-governmental entity related to the Agency whose assets, operations, and management are legally and effectively controlled by the Agency, and through which Agency functions or policies are implemented, and which public funds or public assets to carry out community development activities and programs of the Agency.

### **Article III. Procurement standards.**

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Section 3.01 The Agency must use this procurement policy and procedures contained herein (“Procurement Policy”), which reflects applicable federal, state, and local laws and regulations. The Agency must maintain documentation of following the Procurement Policy, proper laws and regulations, and the standards identified in this section.

Section 3.02 The Agency will maintain a contract administration system that ensures that contractors perform following the terms, conditions, and specifications of their contracts or purchase orders.

Section 3.03 The Agency must avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

Section 3.04 To foster greater economy and efficiency, the Agency is encouraged to enter into state and local intergovernmental agreements for procurement or use of common goods and services.

Section 3.05 The Agency is encouraged to use Federal excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

Section 3.06 The Agency should use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

Section 3.07 The Agency must only award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, a record of past performance, and financial and technical resources.

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<sup>1</sup> Immediate family includes father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

Section 3.08 The Agency must maintain records sufficient to detail the significant history of a procurement. These records will include but are not necessarily limited to, the following:

- (a) The rationale for the method of procurement (if not self-evident);
- (b) The rationale of contract pricing arrangement (also if not self-evident);
- (c) The reason for accepting or rejecting the bids or offers;
- (d) The basis for the contract price;
- (e) A copy of the contract documents awarded or issued and signed by the Contracting Officer;
- (f) The basis for contract modifications; and
- (g) Related contract administration actions.
- (h) The level of documentation should be commensurate with the value of the procurement based on the method of procurement.

Section 3.09 The Agency may use time and material type contracts only after a determination that no other contract is suitable, and if the contract includes a ceiling price that the contractor exceeds at its own risk<sup>2</sup>.

Section 3.10 The Agency alone must be responsible, by good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. Issues may include but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Agency of any contractual responsibilities under its contracts. Federal agencies generally will not substitute their judgment for that of the Agency unless the matter is primarily a federal concern. Violations of law will be referred to as the local, state, or federal authority having proper jurisdiction.

Section 3.11 The Agency must ensure that the organization for which it is contracting is not suspended or debarred from doing business with the U.S. Federal Government before entering into a covered transaction. This background evaluation must be documented and retained in the procurement file. The Agency may use [www.sam.gov](http://www.sam.gov) to perform this search.

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<sup>2</sup> Time and materials type of contract means a contract whose cost to the Agency is the sum of the actual cost of materials and the direct labor charged at a fixed hourly rate. This rate should reflect wages, general and administrative expenses and profit. Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency, there must be a ceiling price.

## Article IV. Competition.

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Section 4.01 The Agency must conduct all procurement transactions in a manner providing full and open competition consistent with the standards of these guidelines. Some of the situations considered to be restrictive of competition include but are not limited to:

- (a) To ensure objective contractor performance and eliminate an unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.
- (b) It is placing unreasonable requirements on firms for them to qualify to do business. The Agency must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographic preference in the evaluation of bids or proposals except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (c) Requiring unnecessary experience and excessive bonding,
- (d) Noncompetitive pricing practices between firms or between affiliated companies,
- (e) Noncompetitive awards to consultants that are on retainer contracts,
- (f) Organizational conflicts of interest,
- (g) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement, and
- (h) Any arbitrary action in the procurement process.

Section 4.02 The Agency must have written selection procedures for procurement transactions. These procedures must ensure that all appropriate solicitations:

- (a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service being procured<sup>3</sup>; and
- (b) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Section 4.03 The Agency will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The Agency will not preclude potential bidders from qualifying during the solicitation period.

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<sup>3</sup> Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

## **Article V. Methods of procurement to be followed.**

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### **Section 5.01 Preferred Source Offerings – New York State Law**

- (a) Section 162 (4) of NYS Finance Law requires public authorities and public benefit corporations, including those public benefit corporations that meet the definition of a state or local authority, as defined by Title 1 Section 2 of Public Authorities Law to purchase certain approved products and services from preferred sources if available. Purchases from preferred sources take precedence over all other sources of supply and competitive procurement methods. The Program intends to advance social and economic opportunities for state inmates, people who are blind and visually impaired, and people who are disabled and/or veterans. You can find more information for purchasing from a Preferred Source on the [NY State Office of General Services website](#).

### **Section 5.02 Cooperative Purchasing / Intergovernmental Purchasing**

- (a) The Agency may use state and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The Agency may decide to use an interagency agreement instead of conducting a direct procurement because for reasons of economy and efficiency. If used, the interagency agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions.
- (b) The Agency may use federal or state excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services available through a cooperative purchasing agreement must be procured following state and/or federal procurement policies.

### **Section 5.03 Petty Cash Purchases**

- (a) The Agency staff may purchase items under \$50 may through the use of a petty cash account. Petty Cash Accounts may be established in an amount sufficient to cover small purchases made during a reasonable period, e.g., one month. For all Petty Cash Accounts, the Agency shall ensure that security is maintained and only authorized individuals have access to the account. These accounts should be reconciled and replenished periodically.

### **Section 5.04 Procurement by micro-purchase (not to exceed the threshold of \$10,000)**

- (a) Micro-purchases do not require a bid or quote. If practical, micro-purchases are distributed equitably among a range of vendors.



**Section 5.05 Procurement by small purchase procedures** (not to exceed \$250,000).

- (a) Small purchase procedures are those relatively simple and informal procurement methods. For any amounts above the micro-purchase ceiling of \$10,000, the Agency may use small purchase procedures. If small purchase procedures are used, three price or rate quotations shall be obtained from an adequate number of qualified sources, and the approval of the Executive Director of the Agency.
- (b) Small purchase procedures will be used for procurements include small “sealed bids” and small “RFPs” following the advertising and procurement requirements outlined in General Municipal Law (“GML”) Article 5-A for public contracts. The thresholds for public advertising and letting of public contracts under the GMU is \$20,000 for goods and services and \$35,000 for public works contracts.

**Section 5.06 Procurement by sealed bids (formal advertising)** – Threshold is \$250,001 and greater

- (a) This method of procurement is also called “Invitation to Bid” or “IFB”. The federal IFB process is distinguished from the NYS GML §103 requirements in being a more formal process with specific requirements.
- (b) For sealed bidding to be feasible, the following conditions should be present:
  - (i) *A complete, adequate, and realistic specification or purchase description is available;*
  - (ii) *Two or more responsible bidders are willing and able to compete effectively and for the business; and*
  - (iii) *The procurement lends itself to a firm fixed-price contract, and the selection of the successful bidder made principally based on price.*
- (c) If sealed bids are used, the following requirements must apply:
  - (i) *The invitation for bids will be publicly advertised, and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time;*
  - (ii) *The invitation for bids must define the items or services for bidders to properly respond;*
  - (iii) *All bids must be publicly opened at the time and place prescribed in the invitation for bids;*
  - (iv) *A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and*
  - (v) *Any or all bids may be rejected if there is a sound documented reason.*

**Section 5.07 Procurement by competitive proposals** – Threshold is \$250,001 and greater

- (a) This method of procurement is also called “Requests for Proposals” or “RFP”. The federal RFP process is distinguished from NYS GML 103 in being a more formal process with specific requirements.
- (b) Unlike sealed bidding, the competitive proposal method permits consideration of technical factors other than price; discussion with offerors concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. The award is normally made based on the proposal that represents the best overall value to the Agency, considering the price and other factors, e.g., technical expertise, experience, quality of proposed staffing, etc., outlined in the solicitation and not solely the lowest price.
- (c) Conditions for Use. Where conditions are not appropriate for the use of sealed bidding, the Agency will use competitive proposals. Competitive proposals are the preferred method for procuring professional services that will exceed the small purchase threshold.
- (d) Form of Solicitation. Other than Architecture and Engineering Services (“A/E Services” or “A/E”), the Agency shall solicit competitive proposals through the issuance of a Request for Proposals (“RFP”). If this method of procurement is used, the following requirements apply:
  - (i) *Requests for proposals must be publicized and identify all evaluation factors and their relative importance<sup>4</sup>. Any response to publicized requests for proposals shall be honored to the maximum extent practicable;*
  - (ii) *Proposals must be solicited from an adequate number of qualified sources;*
  - (iii) *The Agency must have a method for conducting technical evaluations of the proposals received and for selecting awardees<sup>5</sup>;*
  - (iv) *Awards must be made to the responsible firm whose proposal is most advantageous to the program, with the price and other factors considered; and*

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<sup>4</sup> The RFP shall clearly identify the importance and relative value of each of the evaluation factors as well as any sub-factors and price.

<sup>5</sup> A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals until after award. The Agency may assign price a specific weight in the evaluation criteria or the Agency may consider price in conjunction with technical factors; in either case, the method for evaluating price shall be established in the RFP.

**Section 5.08 Procurement by Qualifications Based Services (“QBS Procedures”) for A/E Firms – Threshold is \$250,001 and up.**

- (a) The Agency may use QBS competitive proposal procedures for A/E professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation<sup>6</sup>. The method, where the price is not used as a selection factor, can only be used in the procurement of A/E professional services. QBS procedures cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

**Section 5.09 Procurement by noncompetitive proposals (sole provider/emergency) – Threshold is \$10,001 and greater -Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:**

- (a) The item is available only from a single source;
- (b) The public exigency or emergency for the requirement will not permit a delay resulting from the competitive solicitation. An emergency exists that seriously threatens the public health, welfare, or safety, or endangers property, or would otherwise cause serious injury as may arise because of a flood, earthquake, epidemic, riot, equipment failure, or another similar event. An emergency includes both project, program participant, and operational emergencies. In such cases, there must be an immediate and serious need for supplies, services or construction such that the need cannot be met through any of the other procurement methods, and the emergency procurement shall be limited to those supplies, services, or construction necessary to meet the emergency.
- (c) The awarding agency authorizes noncompetitive proposals; or
- (d) After solicitation of a reasonable number of sources, competition is determined inadequate.
- (e) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits are required.
- (f) The Agency may be required to submit the proposed procurement to the awarding agency for pre-award review<sup>7</sup>.

## **Article VI. Contracting with small and minority firms, women's business enterprises, and labor surplus area firms.**

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**Section 6.01** The Agency must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms participate. Affirmative steps include:

**Section 6.02** Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

**Section 6.03** Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

**Section 6.04** Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

Section 6.05 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

Section 6.06 Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, NYS Empire State Development Corporation, and Nassau County Office of Minority Affairs.

Section 6.07 Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

Section 6.08 Both New York State and Nassau County<sup>8</sup> have established goals, which are updated periodically for participation by small businesses, minority-owned businesses, women-owned business enterprises, labor surplus area businesses, and Section 3 business concerns in Agency prime contracts and subcontracting opportunities. The Agency will follow the goals set within the individual contract. Nassau County contracts set forth specific requirements for MBE/WBE participation as defined in Nassau County Local Law No. 14-2002 §101, and New York State sets forth its program in NYS Executive Law Article 15-A.

Section 6.09 Definitions:

- (a) A small business is defined as a business that is: independently owned, not dominant in its field of operation, and not an affiliate or subsidiary of a business dominant in its field of operation. The Agency should size standards in 13 CFR Part 121 to determine business size.
- (b) A minority-owned (“MBE”) or women-owned business enterprise (WBE”) is defined as a for-profit business which is at least 51% or, owned, operated, and controlled by citizens or permanent resident aliens who are either a minority and/or woman, and the ownership is real, substantial and continuing
- (c) A “Section 3 business concern” is as defined under 24 CFR Part 135.
- (d) A labor surplus area business is a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

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<sup>6</sup> The Agency may choose to procure A/E Services through the RFP method.

<sup>7</sup> This would be done as per the funding agency or pass-through entity requirements. For example, providing a copy of the proposed award to OCD which they in turn can submit to HUD for review.

<sup>8</sup> Nassau County is currently undertaking a diversity study.

## Article VII. Contract cost and price.

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Section 7.01 The Agency must perform a cost or price analysis in connection with every procurement action above the micro-purchase threshold, including contract modifications. The method and degree of analysis are dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent cost estimates (“Independent Cost Estimate” or “ICE”) before receiving bids or proposals.

- (a) A cost analysis must be performed when the offeror (bidder or proposer) is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts.
- (b) A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.
- (c) A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
- (d) The Agency shall require assurance that, before entering into a contract, the price is reasonable as follows:
  - (i) *Petty Cash and Micro Purchases - No formal cost or price analysis is required. Rather, the execution of a contract by the Contracting Officer (through a Purchase Order or other means) shall serve as the Contracting Officer’s determination that the price obtained is reasonable, which may be based on the Contracting Officer’s prior experience or other factors.*
  - (ii) *Small Purchases - A comparison with other offers shall generally be sufficient determination of the reasonableness of price, and no further analysis is required. If a reasonable number of quotes is not obtained to establish reasonableness through price competition, the Contracting Officer shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Contracting Officer’s knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.*
  - (iii) *Sealed Bids - The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, and when the bid received is substantially more than the ICE, and where the Agency cannot reasonably determine price reasonableness, the Agency must conduct a cost analysis, consistent with federal guidelines, to ensure that the price paid is reasonable.*
  - (iv) *Competitive Proposals - The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient bids are not received, the VHHA must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not an adequate competition, or where the price is substantially greater than the ICE, the VHHA must conduct a cost analysis, consistent with Federal guidelines, to ensure that the price paid is reasonable.*

Section 7.02 The Agency will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Section 7.03 Costs or prices based on estimated costs for contracts under grants are allowable only to the extent that costs incurred or cost estimates included in negotiated prices.

Section 7.04 The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

## **Article VIII. Solicitation and Advertising**

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### **Section 8.01 Method of Solicitation**

- (a) A good faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or quotations, the purchaser will document the attempt made at obtaining the proposals, including the vendors contacted and the reason no quote or proposal could be secured. In no event shall the failure to obtain the proposals be a bar to the procurement.
  - (i) *Petty Cash and Micro Purchases. The Agency may contact only one source if the price is considered reasonable.*
  - (ii) *Small Purchases. Quotes may be solicited orally, through fax, or by any other reasonable method.*
  - (iii) *Sealed Bids and Competitive Proposals. The solicitation must be done publicly. The Agency must use one or more following solicitation methods, provided that the method employed provides for meaningful competition. Best efforts will be made to include outreach to MBE/MWE firms and Section 3 concerns.*
    - 1) Advertising in newspapers or other print mediums of local or general circulations.
    - 2) Advertising in various trade journals or publications (for construction) and/or through the New York State Contract Reporter.
    - 3) E-Procurement. The Agency may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurement must otherwise comply with Federal, State, and local requirements and the Agency's procurement policy.
    - 4) Advertising on the Agency's website [www.northhempsteadny.gov](http://www.northhempsteadny.gov).
    - 5) Establishing and soliciting participation from vendor lists maintained by Agency or the Town of North Hempstead.

### **Section 8.02 Timeframe.**

- (a) For procurements that require public notice, a minimum of two weeks is deemed sufficient.

### Section 8.03 Form of advertisement.

- (a) Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, the solicitation number, a contact who can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).

### Section 8.04 Period for Submission of Bids or Proposals

- (a) A minimum of 30 days shall generally be provided for the preparation and submission of sealed bids and 15 days for competitive proposals. However, the Executive Director may allow for a shorter period under extraordinary circumstances.

## **Article IX. Federal awarding agency or pass-through entity review (2 CFR § 200.324)**

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Section 9.01 The Agency must make available, upon request of the awarding agency or pass-through entity, technical specifications on proposed procurements where the awarding agency or pass-through entity believes such review is needed to ensure that the item and/or service specified is the one being proposed for acquisition. This review generally will take place before the time the specification is incorporated into a solicitation document. However, if the Agency desires to have the review accomplished after a solicitation has been developed, the awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

Section 9.02 The Agency must make available on request, for the awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- (a) The Agency's procurement procedures or operation fails to comply with the procurement standards in 2 CFR § 200.318-200.326; or
- (b) The procurement is expected to exceed the Simplified Acquisition Threshold<sup>9</sup> (2 CFR § 200.88) and awarded without competition, or the Agency receives only one bid or offer in response to a solicitation; or
- (c) The procurement is expected to exceed the Simplified Acquisition Threshold and specifies a "brand name" product;
- (d) The proposed award is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (e) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

Section 9.03 The Agency may be exempt from the pre-award review the awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- (a) The Agency may request that its procurement system is reviewed by the awarding agency or pass-through entity to determine whether its system meets these standards for its system to be certified. Generally, these reviews shall occur where there is continuous high-dollar funding, and third-party contracts are awarded regularly.

- (b) The Agency may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the Agency that it is complying with these standards. The Agency must cite specific procedures, regulations, standards, as complying with these requirements, and have its system available for review.

**Article X. Bonding requirements for Construction or Facility Improvement Contracts or Subcontracts Exceeding the Simplified Acquisition Threshold - \$250,001 or greater.**

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For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the awarding agency or pass-through entity may accept the bonding policy and requirements of the Agency provided the awarding agency or pass-through entity has determined that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

**Section 10.01 A bid guarantee**

- (a) A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

**Section 10.02 A performance bond**

- (a) A **performance bond** on the part of the contractor for 100 percent (100%) of the contract price. A “performance bond” is one executed in connection with a contract to secure the fulfillment of all the contractor's obligations under such a contract.

**Section 10.03 A payment bond**

- (a) A payment bond on the part of the contractor for 100 percent (100%) of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**Section 10.04 Other forms of assurance**

- (a) A performance and payment bond in a penal sum of 100% of the contract price; or
- (b) Separate performance and payment bonds, each for 50 % or more of the contract price; or
- (c) A 20 % cash escrow; or
- (d) A 25 % irrevocable (evergreen) letter of credit.

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<sup>9</sup> As of June 20, 2018, the Simplified Acquisition Threshold was revised by the Federal Government to \$250,000. Simplified Acquisition includes procurement by small purchase procedures and micro-purchases.



Section 10.05 These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State where the work is to be performed. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. The use of companies on this circular is mandatory.

## **Article XI. Contractor Qualifications and Duties**

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Section 11.01 Contractor Responsibility. The Agency will not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

- (a) Have adequate financial resources to perform the contract, or the ability to obtain them;
- (b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all the bidder's/offeror's existing commercial and governmental business commitments;
- (c) Have a satisfactory performance record;
- (d) Have a satisfactory record of integrity and business ethics;
- (e) Have the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;
- (f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,
- (g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred, or determined to be ineligible by federal or state agencies.

Section 11.02 If a prospective contractor is determined to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file. The Agency will notify the prospective contractor of the reasons for the determination.

## **Article XII. Contract provisions for Federally Funded Projects (2 CFR § 326).**

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Section 12.01 The Agency's contracts must contain applicable provisions described in Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts under Federal Awards<sup>10</sup>, as set forth below.

Section 12.02 Contracts for more than the Simplified Acquisition Threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

Section 12.03 All contracts over \$10,000 must address termination for cause and for convenience by the Agency, including how it will be affected and the basis for settlement.

Section 12.04 **Equal Employment Opportunity.** Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded over \$10,000 by Agency and its contractors or subgrantees).

Section 12.05 **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation<sup>11</sup>, all prime construction contracts over \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5). Labor standards contained in the HUD Davis-Bacon Related Acts affect whether and to what extent prevailing wage requirements are applicable. The Housing and Community Development Act of 1974, Section 110(a) (CDBG, Section 108 Loan Guarantee, EDI/BEDI), and the National Affordable Housing Act, Section 286 (a) (HOME Program) establishes thresholds for when Davis-Bacon Wages are triggered<sup>12</sup>. If the Davis-Bacon Act is triggered, the Agency will comply with the Act in coordination with OCD and the HUD Office of Labor Relations.

Section 12.06 **The Copeland "Anti-Kickback" Act** (40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Agency must report all suspected or reported violations to the Federal awarding agency.

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<sup>10</sup> Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

<sup>11</sup> HUD sets specific thresholds and triggers for the CDBG and HOME Programs which exempt a variety of CDBG projects financed and HOME projects assisted with federal funds. The Agency works directly with OCD on determining if the Davis-Bacon Act is triggered.

Section 12.07 **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the Agency over \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). New York State Labor Laws will apply to any contract as well.

Section 12.08 **Rights to Inventions Made Under a Contract or Agreement**. If the Federal award meeting the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement”, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Section 12.09 **Clean Air Act** (42 U.S.C. 7401-7671q.) and the **Federal Water Pollution Act** (33 U.S.C. 1251-1387), as amended – Contracts and sub-grants of amounts over \$150,000 must contain a provision that requires the non-Federal ward to agree to comply with all applicable standards, orders or regulations issued to the acts described above. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Section 12.10 **Debarment and Suspension (Nonprocurement)** (Executive Orders 12549 and 12689) A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), following the OMB guidelines at 2 CFR 180 as supplemented by 2 CFR Part 2424 that implement Executive Orders 12549 and 12689.

Section 12.11 **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification.

Section 12.12 **Procurement of recovered materials** (Recycling) - Comply with 2 CFR § 200.322.

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<sup>12</sup> The Agency’s CDBG Subrecipient contract provides: Davis-Bacon Threshold: The Subrecipient, Developer or Contractor agrees that, except with respect to the rehabilitation or construction or residential property containing fewer than eight (8) units, all contractors engaged under contracts in excess of Two Thousand Dollars (\$2,000) for construction, renovation, or repair work finance in whole or part with assistance provided under this agreement, shall comply with Federal requirements (Davis-Bacon). . . .

### **Article XIII. Other Contract Provisions Required by the Federal Agency, New York State, Nassau County, Town, Agency, or other funding sources.**

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Section 13.01 Copyright. If a contract results in any copyrightable material or inventions, the Grantee (the Agency) and/or Grantor (i.e., OCD) reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

Section 13.02 Records Access. Access shall be provided by Contractor or Subrecipient to the Agency, the Federal Grantor Agency, the Comptroller General of the United States, OCD, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract to make audit, examination, excerpts, and transcriptions.

Section 13.03 Records Retention. Retention of all required records for three years after the Agency and its sub-grantees make final payments, and all other pending matters are closed. The Agency will follow the New York State Records Retention and Disposal Schedule MU-1 Community Development/Urban Renewal as per the State Archives and Records Administration.

Section 13.04 Religious Activities. The Agency, subrecipient, or contractor agrees that funds provided will not be used for explicitly religious activities as prohibited by 24 CFR § 5.109<sup>13</sup>.

Section 13.05 Hatch Act. The Subrecipient, Developer or Contractor shall ensure that no funds provided, nor personnel employed with federal funds will engage in partisan political activities in violation of 5 CFR § 151.

Section 13.06 National Environmental Policy Act of 1969 (“NEPA”)(42 U.S.C. § 4321, et. seq.) Review and General Environmental Compliance. OCD conducts a NEPA review following HUD Environmental Review Procedures (24 CFR Part 58). The Agency, subrecipients, developers, and contractors are required to cooperate with OCD in conducting NEPA review and to also comply with other applicable federal and state environmental and historic regulations governing activities funded by CDBG.

Section 13.07 Flood Disaster Protection. The Subrecipient, Developer, or Contractor must for activities located in an area identified by the Federal Emergency Management Agency (“FEMA”) as having special flood hazards, the developer of contractor shall obtain and maintain as a condition of financial assistance for acquisition or construction purposed (including rehabilitation) flood insurance under the National Flood Insurance Program. Flood maps are available at [www.fema.gov/index.shtm](http://www.fema.gov/index.shtm)

Section 13.08 Lead-Based Paint. The Contractor shall comply with HUD Lead-Based Paint Regulations found at

Section 13.09 Mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

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<sup>13</sup> 24 CFR § 5.109 – Equal participation of faith-based organizations in HUD programs and activities.

Section 13.10 Providing Economic Opportunities under Section 3 of the Housing and Urban Development Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992 (“Section 3”). The Section 3 Program requires that recipients of HUD funds, to the greatest extent possible provide training, employment, contracting and other economic opportunities to low and very-low-income persons (incomes at or below 80% or 50% of HUD Area Median Income), especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low and very-low-income persons. The Section 3 Threshold applies to projects for which HUD’s share of the project costs exceed \$200,000, and the contractor or subcontract exceeds \$100,000. All Section 3 covered contracts must include the Section 3 Clause verbatim. The Section 3 Clause is attached (Exhibit A)

Section 13.11 For construction contracts, encouragement of contractors to enter into Project Labor Agreements with labor organizations, and encouragement of contractors to cause labor organizations to establish apprenticeship training programs. All project labor agreements where HUD assistance exceeds the Section 3 Threshold must include the Section 3 Clause verbatim.

#### **Article XIV. Appeals and Remedies**

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Section 14.01 General. It is the Agency policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to OCD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.

Section 14.02 Informal Appeals Procedure. The Agency shall adopt an informal bid protest/appeal procedure for contracts under the Simplified Acquisition Threshold. Under these procedures, the bidder/contractor may request to meet with the appropriate Contract Officer.

Section 14.03 Formal Appeals Procedure. The Agency established a formal appeals procedure for procurements exceeding the Simplified Acquisition Threshold.

- (a) Bid Protest. Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contractor receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Contracting Officer or designee, who shall issue a written decision on the matter. The Contracting Officer may, at his/her discretion, suspend the procurement, pending resolution of the protest if the facts presented so warrant.
- (b) Contractor Claims. All claims by a contractor relating to the performance of a contract shall be submitted in writing to the Contracting Officer for a written decision. The contractor may request a conference on the claim. The Contracting Officer’s decision shall inform the contractor of its appeal rights to the next higher level of authority in the Agency. The Changes clause in the contract shall govern contractor claims.

## Exhibit A – Section 3 Clause

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24 CFR § 135.38 - All section 3 covered contracts shall include the following clause (referred to as the “**Section 3 Clause**”) – the threshold is when HUD’s share of project cost exceeds \$200,000, and the contract or subcontract exceeds \$100,000)

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediments that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the worksite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).