

TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY  
PROCUREMENT POLICY  
ADOPTED MARCH 21, 2017

A. Introduction

1. Scope - In accordance with Article 18-A of the General Municipal Law (the "IDA Act"), Section 104-b of the General Municipal Law, and the Public Authorities Accountability Act of 2005, the Town of Lancaster Industrial Development Agency is required adopt procurement policies which will apply to the procurement of goods and services not subject to the competitive bidding requirements of Section 103 of the GML and paid for by an IDA for its own use and account.
2. Purpose - Pursuant to Section 104-b of the GML, the primary objectives of this policy are to assure the prudent and economical use of public monies in the best interests of the taxpayers of a political subdivision or district, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances and to guard against favoritism, improvidence, extravagance, fraud and corruption.

B. Procurement Policy

1. Procedure for determining whether Procurements are subject to Competitive Bidding - The procedure for determining whether a procurement of goods and services is subject to competitive bidding shall be as follows:
  - a. The CFO or an authorized designee shall make the initial determination as to whether competitive bidding is required. This determination will be based on Section 103 of the GML which requires competitive bidding for expenditures of (1) more than \$35,000 for the performance of any public works contract (services, labor or construction), and (2) more than \$20,000 for any purchase contract (acquisition of commodities, materials, supplies or equipment).
  - b. The CFO or such authorized designee shall review the purchase request against prior years' expenditures and a good faith effort will be made to determine whether it is known or can reasonably be expected that the aggregate purchases of a similar nature will exceed the above competitive bidding procedures shall be followed for said expenditure.
  - c. The CFO or such authorized designee shall present any legal issues regarding the applicability of the competitive bidding requirements stated herein to the Agency's Counsel.
2. Methods of Competition to be used for Non-Bid Procurements and Procurements Exempt by Statute - Alternative proposals or quotations for goods and services shall be secured by use of written requests for proposals or written quotations, verbal quotations or any other method of procurement which furthers the purposes of this Section except for items excepted herein (see 7 below) or procurements made pursuant to:
  - a. GML, Section 103 (3) (through county contracts), or
  - b. GML, Section 104 (through state contracts), or

- c. State Finance Law, Section 175-b (from agencies for the blind or severely handicapped), or
  - d. Correction Law, Section 186 (articles manufactured in correctional institutions).
- 3. Procedures for the Purchase of Commodities, Equipment or Goods under \$20,000.
  - a. Up to \$1,000 The discretion of the CFO or authorized designee.
  - b. \$1,001 - \$3,000 Documented verbal quotations from at least three vendors.
  - c. \$3,001 - \$20,000 Written/fax quotations from at least three vendors.
- 4. Procedures for the Purchase of Public Works or Services under \$35,000.
  - a. Up to \$2,000 The discretion of the CFO or authorized designee.
  - b. \$2,001 - \$5,000 Documented verbal quotations from at least three vendors.
  - c. \$5,001 - \$35,000 Written/fax quotations from at least three vendors.
- 5. Basis for the Award of Contracts - Contracts will be awarded to the lowest responsible vendor who meets the specifications.
- 6. Circumstances justifying an Award to other than the Lowest Cost quoted.
  - a. Delivery requirements
  - b. Quality requirements
  - c. Quality
  - d. Past vendor performance
  - e. The unavailability of three or more vendors who are able to quote on a procurement.
  - f. It may be in the best interests of the Agency to consider only one vendor who has previous expertise with respect to a particular procurement.
- 7. Documentation
  - a. The basis for any determination that competitive bidding is not required shall be documented, in writing, by the CFO or such authorized designee, and filed with the purchase order or contract therefore.
  - b. For those items not subject to competitive bidding such as professional services, emergencies, purchased under county contracts or procurements from sole sources, documentation should include a memo to the files which details why the

procurement is not subject to competitive bidding and include, as applicable:

- (1) a description of the facts giving rise to the emergency and that they meet the statutory criteria; or
- (2) a description of the professional services; or
- (3) written verification of city contracts; or
- (4) opinions of Counsel, if any; or
- (5) a description of sole source items and how such determinations were made.

d. Whenever an award is made to other than the lowest quote the reasons for doing so shall be set forth in writing and maintained in the procurement file.

e. Whenever the specified number of quotations cannot or will not be secured, the reasons for this shall be indicated in writing and maintained in the procurement file.

## 8. Exceptions to Bidding

a. Emergency Situation - An emergency exists if the delay caused by soliciting quotes would endanger the health, welfare or property of the municipality or of the citizens. With approval by the CFO such emergency shall not be subject to competitive bidding or the procedures stated above.

b. Resolution Waiving Bidding Requirements - The Agency may adopt a resolution waiving the competitive bidding requirements whenever it is determined to be impracticable.

c. Sole Source - Defined as a situation when there is only one possible source item which to procure goods and/or services and it is shown that the item needed has unique benefits, the cost is reasonable for the product offered and there is no competition available. In this situation, a request for a resolution waiving bidding requirements, as described above, is required.

d. True Lease - Prices will be obtained through quotations whenever possible. The award shall be made on the basis of goods and/or services to be provided, ability to meet the specifications desired and price.

e. Insurance - All insurance policies shall be procured in accordance with the following procedures:

- (1) Premiums of \$5,000 or less at the discretion of the CFO
- (2) Premium more than \$5,000 but less than \$10,000 - documented telephone quotations from at least three agents (if available).
- (3) Premium over \$10,000 - written quotations/fax or

proposals from at least three agents (if available)

- f. Professional Services – Professional services are not subject to this Procurement Policy.
- 9. Minority and Women Business Enterprises - The Agency shall comply with all applicable legal requirements relating to the hiring of such businesses.
- 10. Input from members of the Agency - Comments concerning the procurement policy shall be solicited from the members of the Agency from time to time.
- 11. Annual Review - the Agency shall annually review and approve its policies and procedures.
- 12. Unintentional Failure to Comply - The unintentional failure to comply with the provisions of Section 104-b of the GML shall not be grounds to void action taken or give rise to a cause of action against the Agency or any officer thereof.
- 13. New York State Authorities Budget Officer Policy Guidance No. 15-01 issued January 13, 2015 Regarding Restrictions on Grants and Loans Made by Public Authorities is to be attached hereto and hereby is incorporated into and made a part of this Procurement Policy.

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## Authorities Budget Office Policy Guidance



**No.** 15-01

**Date Issued:** January 13, 2015

**Supercedes:** New

**Subject:** Restrictions on Grants and Loans Made by Public Authorities

**Statutory Citation:** Various Sections of New York State Law

**Provision:** State and local authorities, as defined by Section 2 of the Public Authorities Law, whether created as public benefit corporations or formed as not-for-profit corporations, have only those powers explicitly granted or necessarily implied by statute. Accordingly, state and local authorities may engage in only those activities and exercise those powers which are expressly authorized in law or which are incidental to performing their statutory purposes.

**Authorities Budget Office Policy Guidance:** This limitation applies to the power of a state or local authority to award its monies in the form of grants and loans to public or private interests. Such financial assistance is prohibited unless expressly authorized in statute.

A state and local authority (other than an industrial development agency) formed as public benefit corporation may not award grants or issue loans of its own funds unless such power is expressly permitted in its enabling statute. The authority to make grants and execute loans is not an implied power of a public benefit corporation.

An industrial development agency (IDA) may not, under any circumstances, award grants or make loans of its own monies. The New York State Attorney General has opined (Formal Opinion No. 2014-F1) that an IDA does not have the statutory power to provide grants or loans from its own funds to public or private interests. This 2014 Opinion is consistent with the view previously taken by the Office of the State Comptroller (Op. St. Comptr. Nos. 99-4 and 82-360). The Attorney General states that “while an IDA is expressly permitted to *accept* gifts, grants, loans and contributions from various entities and to use such moneys for its corporate purposes, General Municipal Law §858(11), the enabling statutes do not explicitly authorize an IDA to make grants or loans of its money to any type of entity. Nor do we believe that these activities are necessary for an IDA to completely exercise the powers granted by the Legislature.”

The statutory restrictions on a state or local authority’s power to award grants and issue loans is clear and unambiguous. A state or local authority may only accept loans, grants and contributions from federal, state or other public or private sources and expend or pass through those funds consistent with the public purpose of the

authority and statutory or programmatic limitations imposed on the use of those funds.

A state or local authority, unless otherwise empowered under the law, may not grant or loan its monies to public or private corporations, private businesses or interests, civic associations, charitable groups, educational institutions, not-for-profit corporations, or any other social, religious, fraternal or cultural organization.

Moreover, statutory language such as “to do all things necessary or convenient to carry out its purposes”, “to act in the public interest” or “to lessen the burden of government” should not be construed as providing a state or local authority with implied authorization to make grants or loans from its own monies in the absence of clear statutory language. In fact, the Attorney General has stated that such an interpretation “would render meaningless the Legislature’s careful delineation of express powers.”

All state and local authorities which, as a matter of practice or policy, grant or loan their monies to such entities without specific legislative authorization are directed to immediately end such practice or policy so as to comply with applicable state law and the opinions of the State Attorney General and State Comptroller.