

TOWN OF LANCASTER
INDUSTRIAL DEVELOPMENT AGENCY
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**AGENDA
REGULAR MEETING OF
LANCASTER INDUSTRIAL DEVELOPMENT AGENCY**

TUESDAY, MARCH 21, 2017 AT 8:30 AM

**HELD AT
LANCASTER TOWN HALL
21 CENTRAL AVENUE, LANCASTER, NY 14086**

**PUBLIC HEARINGS: ROLITE MFG. INC.
CRUSE ENTERPRISES INC.**

REGULAR MEETING:

Call to order by Chair Coleman at

Roll Call: Present: Frank Fialkiewicz
Steven Hoffman
Alan Kurtzman
Jesse Nikonowicz
Kenneth O'Brien
David Visone
Chair Coleman

Excused:

Absent:

Also Present: Richard Grimm, General Counsel/Bond Counsel
Robert Benzel, Chief Executive Officer
David J. Brown, Chief Financial Officer
Paul Leone, Consultant

Presentation of Minutes from February 14, 2017 meeting: Motion by Member _____,
seconded by Member _____, and approved, corrected or denied.

Presentation of Financial Statement for period of February 14, 2017 to March 21, 2017: Motion by
Member _____, seconded by Member _____, and approved, corrected or
denied

RESOLUTIONS:

- 1. RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING ROLITE MFG., INC. (THE "LESSEE") TO RENOVATE AND EXPAND ITS EXISTING FACILITY AT 10 WENDLING COURT IN THE TOWN OF LANCASTER, NEW YORK AND TO PURCHASE ADJOURNING 3.67 ACRES TO CONSTRUCT A NEW 15,000 SQUARE FOOT ADDITION TO ITS EXISTING BUILDING, TO BE USED FOR MANUFACTURING PURPOSES, COMMERCIAL OFFICE SPACE AND WAREHOUSE SPACE, THE ACQUISITION OF EQUIPMENT AND FIXTURES IN CONNECTION THEREWITH, AND THE GRANT TO THE LESSEE OF ASSISTANCE INCLUDING MORTGAGE TAX ABATEMENT, REAL PROPERTY TAX ABATEMENT AND SALES TAX ABATEMENT THROUGH A PAYMENT IN LIEU OF TAX AGREEMENT.**

WHEREAS, ROLITE MFG., INC. (the "Lessee") has entered into negotiations with officials of the Town of Lancaster Industrial Development Agency (the "Agency") with respect to the acquisition and equipping by the Agency with the proceeds of a mortgage with lease, leaseback, or lease only transaction of a manufacturing facility under the New York State Industrial Development Agency Act consisting the purchase of adjoining 3.67 acres including the construction of an approximately 15,000 square foot addition to the Lessee's existing building, located at 10 Wendling Court in the Town of Lancaster, New York, to be used for manufacturing purposes, commercial office space and warehouse space, and the purchase of fixtures and equipment in connection therewith, which facility is to be acquired and/or leased by the Agency and leased back by the Agency to the Lessee and the which fixtures equipment are to be acquired by the Agency through an Installment Sale Agreement (the "Project"); and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency assistance to construct the Project with resultant continued employment in the Town of Lancaster, the Lessee currently employs 32 full time employees and 4 part time employees and it is anticipated that the Lessee will increase its employment to employ 40 full time employees and 5 part time employees after the Project is completed together with construction jobs during the construction period; the availability of financing and/or other assistance by the Agency will facilitate the Lessee's ability to expand Lessee's business within the Town of Lancaster; there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lancaster; the Project will provide employment and substantial capital investment; and Agency financing or other assistance is necessary to allow the Lessee to proceed with the Project in the Town of Lancaster; and

WHEREAS, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Town of Lancaster;

NOW, THEREFORE, THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition and construction of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote, and is authorized by, and will be in furtherance of, the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project and the services it offers; (b) that but for the availability of Agency financing or other assistance for the Project in such area, the Project would not be economically feasible; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will provide substantial employment and substantial capital investment; and (e) the Project is necessary for the Lessee to maintain employment in the Town of Lancaster. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the Agency entering into a lease and leaseback only or lease with mortgage transaction; and (g) the Agency's assistance with the Project is an integral part of the Lessee's plans to proceed in the Town of Lancaster.

Section 2. The Agency hereby authorizes the Lessee to proceed with the acquisition and construction of the Project as herein authorized, which Project is ultimately anticipated to be financed through a mortgage transaction with a lease and leaseback transaction or in the alternative through a lease and leaseback only transaction.

Section 3. The Agency will undertake, as soon as particular terms and conditions of a Lease Agreement are determined to enter into a lease and leaseback with the Lessee.

Section 4. The Chairman, Vice Chairman, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in the acquisition and construction of the Project.

Section 5. The Lessee is authorized to initiate site preparation work and the construction of the additional manufacturing space of the existing building and renovation of the existing building with a cost not to exceed \$3,435,000.000 without further approval by the Agency. The Agency is hereby authorized to enter into Agent Agreements and such other agreements with the Lessee as the Chairman, Vice Chairman or other authorized officer may deem necessary in order to accomplish the above.

Section 6. Any such action heretofore taken by the Lessee in initiating the acquisition and construction of the Project are hereby ratified, confirmed and approved.

Section 7. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses with respect to the Project and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof, if applicable.

Section 8. The Agency hereby authorizes the Lessee to proceed with the Project with the estimated maximum cost to the Lessee of the Project not to exceed \$3,435,000.00, as herein authorized. The assistance by the Agency shall be financed through a lease with mortgage or lease and leaseback, between the Agency and the Lessee, sales tax abatement, mortgage tax abatement and real property tax abatement. No other financial assistance shall be provided unless and until it is authorized following a duly held public hearing.

Section 9. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution, or (b) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 10. This resolution is also subject to (a) construction of space suitable for the purpose authorized herein, (b) provision for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 11. The execution and delivery of an Agent Agreement and lease/leaseback between the Agency and the Lessee, substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman or Secretary, are hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 12. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and such other information as the Agency has deemed necessary to make this determination, that the Project constitutes a Type II action under the State Environmental Quality Review Act and does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions will not have a significant effect on the environment.

Section 13. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs or the extent to which proceeds derived from the sale of any bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Lessee hereby agrees to indemnify and holds the Agency harmless from any such loss, damage or expense.

Section 14. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Lessee and shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null and void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 15. This resolution is subject to compliance with all local building and zoning requirements.

Section 16. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MEMBER FIALKIEWICZ	VOTED
MEMBER HOFFMAN	VOTED
MEMBER KURTMAN	VOTED
MEMBER NIKONOWICZ	VOTED
MEMBER O'BRIEN	VOTED
MEMBER VISONE	VOTED
CHAIR COLEMAN	VOTED

2. RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING CRUSE ENTERPRISES INC. (THE "LESSEE") AND WRECKMASTER INC. (THE "SUBLESSEE") TO ACQUIRE APPROXIMATELY 7 ACRES OF LAND AT THE PROPERTY LOCATED AT 5550 GENESEE STREET IN THE TOWN OF LANCASTER, NEW YORK TO CONSTRUCT THEREON A NEW 9,000 SQUARE FOOT TRAINING FACILITY, PLUS PURCHASE OF FIXTURES AND EQUIPMENT, AS AGENT FOR THE AGENCY FOR LEASE TO THE LESSEE AND/OR SUBLESSEE, AND AUTHORIZE THE LESSEE AND SUBLESSEE TO RECEIVE BENEFITS INCLUDING SALES TAX ABATEMENT AND REAL PROPERTY TAX ABATEMENT THROUGH A PAYMENT IN LIEU OF TAX AGREEMENT.

WHEREAS, Cruse Enterprises Inc. (the "Lessee") and Wreckmaster Inc. (the "Sublessee") have entered into negotiations with officials of the Town of Lancaster Industrial Development Agency (the "Agency") with respect to the acquisition and equipping by the Agency with the proceeds of a mortgage with lease, leaseback, or lease only transaction of a training facility under the New York State Industrial Development Agency Act consisting of the construction of a 9,000 square foot training facility, on approximately 7 acres of land located at 5550 Genesee Street, Lancaster, New York, which facility is to be acquired and/or leased by the Agency and leased back by the Agency to the Lessee and/or Sublessee (the "Project"); and

WHEREAS, the Lessee and Sublessee have submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee and Sublessee, including the following: the Lessee and Sublessee desires Agency assistance to construct the Project with resultant increase in employment in the Town of Lancaster; that but for the availability of financing and/or other assistance by the Agency, the Lessee and Sublessee would not establish its business within the Town of Lancaster, that upon the completion of the Project, the Sublessee estimates that the Project will employ 5 full time employees together with construction jobs during the construction period; the availability of financing and/or other assistance by the Agency will facilitate the Lessee's and Sublessee's ability to expand Lessee's and Sublessee's business within the Town of Lancaster; there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lancaster; the Project will provide employment and substantial capital investment; and Agency financing or other assistance is necessary to allow the Lessee and Sublessee to proceed with the Project in the Town of Lancaster; and

WHEREAS, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee and Sublessee with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Lessee and Sublessee to proceed with the Project in the Town of Lancaster;

NOW, THEREFORE, THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition and construction of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote, and is authorized by, and will be in furtherance of, the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee and Sublessee, as follows: (a) it would not have assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project and the services it offers; (b) that but for the availability of Agency financing or other assistance for the Project in such area, the Project would not be economically feasible; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will provide substantial employment and substantial capital investment; and (e) the Project is necessary for the Lessee and Sublessee to maintain employment in the Town of Lancaster. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the Agency entering into a lease and leaseback only or lease with mortgage transaction; and (g) the Agency's assistance with the Project is an integral part of the Lessee's plans to proceed in the Town of Lancaster.

Section 2. The Agency hereby authorizes the Lessee and Sublessee to proceed with the Project with the estimated maximum cost to the Lessee of the Project not to exceed \$1,495,000.00, as herein authorized. The assistance by the Agency shall be financed through a lease and leaseback agreement, and installment sale agreement between the Agency and the Sublessee on the construction of the Improvements and the purchase and installation of the Equipment required in connection therewith. No other financial assistance shall be provided unless and until it is authorized following a duly held public hearing.

Section 3. The Agency will undertake, as soon as particular terms and conditions of a Lease Agreement are determined to enter into a lease and leaseback with the Lessee and Sublessee.

Section 4. The Chairman, Vice Chairman, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee and Sublessee to assist in the acquisition and construction of the Project.

Section 5. The Lessee and Sublessee are authorized to initiate the construction of the building and the Lessee and Sublessee are authorized to initiate the acquisition and installation of machinery and equipment required in connection therewith with a cost not to exceed \$1,495,000.00 without further approval by the Agency. The Agency is hereby authorized to enter into Agent Agreements and such other agreements with the Lessee and Sublessee as the Chairman, Vice Chairman or other authorized officer may deem necessary in order to accomplish the above.

Section 6. Any such action heretofore taken by the Lessee and/or Sublessee in initiating the acquisition and construction of the Project are hereby ratified, confirmed and approved.

Section 7. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee and/or Sublessee. By acceptance hereof, the Lessee and Sublessee

agree to pay such expenses with respect to the Project and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof, if applicable.

Section 8. The Agency hereby authorizes the Lessee and Sublessee to proceed with the Project with the estimated maximum cost to the Lessee and Sublessee of the Project not to exceed \$1,495,000.00, as herein authorized. The assistance by the Agency shall be financed through a lease with mortgage or lease and leaseback, payment in lieu of taxes (PILOT) and installment sale agreement between the Agency and the Sublessee. No other financial assistance shall be provided unless and until it is authorized following a duly held public hearing.

Section 9. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) enters into a lease with mortgage transaction with the Lessee and/or Sublessee or (c) the Lessee and Sublessee shall continue to take affirmative steps to secure financing for the Project.

Section 10. This resolution is also subject to (a) construction of space suitable for the purpose authorized herein, (b) provision for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 11. The execution and delivery of an Agent Agreement and lease between the Agency and the Lessee and/or Sublessee and the execution of an Agency Agreement being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman or Secretary, are hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 12. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and Sublessee and such other information as the Agency has deemed necessary to make this determination, that the Project constitutes a Type II action under the State Environmental Quality Review Act and does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions will not have a significant effect on the environment.

Section 13. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's and Sublessee's purposes or needs or the extent to which proceeds derived from the sale of any bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. The Lessee and Sublessee are satisfied that the Project is suitable and fit for Lessee's and Sublessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Lessee and Sublessee hereby agrees to

indemnify and holds the Agency harmless from any such loss, damage or expense with respect to the Project.

Section 14. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Lessee and Sublessee and shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null and void and of no further force and effect, and the Agency shall have no liability to the Lessee or Sublessee hereunder or otherwise.

Section 15. This resolution is subject to compliance with all local building and zoning requirements.

Section 16. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MEMBER FIALKIEWICZ	VOTED
MEMBER HOFFMAN	VOTED
MEMBER KURTZMAN	VOTED
MEMBER NIKONOWICZ	VOTED
MEMBER O'BRIEN	VOTED
MEMBER VISIONE	VOTED
CHAIR COLEMAN	VOTED

3. RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY

WHEREAS, Drescher & Malecki LLP, Certified Public Accountants has duly examined and audited the fiscal affairs of the Lancaster Industrial Development Agency for the year ended December 31, 2016.

NOW, THEREFORE, BE IT

RESOLVED, that the Board of Directors of the Lancaster Industrial Development Agency hereby accepts the December 31, 2016 audit by Drescher & Malecki LLP entitled “Basic Financial Statements, Required Supplementary Information and Supplemental Information for the Years Ended December 31, 2016 and 2015 and Independent Auditors’ Reports”, and

BE IT FURTHER

RESOLVED, that the Board of Directors directs Mary Nowak to post the audit report to the LIDA website, and

BE IT FURTHER

RESOLVED, that as soon as practicable, the Board of Directors directs Mary Nowak to publish a legal notice in the Lancaster Bee, official newspaper of the LIDA, that the audited financial statements are available for inspection at the LIDA office located at 21 Central Avenue and are also available on the LIDA website.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MEMBER FIALKIEWICZ	VOTED
MEMBER HOFFMAN	VOTED
MEMBER KURTZMAN	VOTED
MEMBER NIKONOWICZ	VOTED
MEMBER O’BRIEN	VOTED
MEMBER VISONE	VOTED
CHAIR COLEMAN	VOTED

March 21, 2017

4. RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY ADOPTING THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY PROCUREMENT POLICY

WHEREAS, 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 to 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.

NOW, THEREFORE, BE IT

RESOLVED, that the Town of Lancaster Industrial Development Agency hereby adopts the Town of Lancaster Industrial Development Agency Procurement Policy, as presented and as attached hereto, to be effective immediately, and which shall supersede any previous version of such policy.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MEMBER FIALKIEWICZ	VOTED
MEMBER HOFFMAN	VOTED
MEMBER KURTZMAN	VOTED
MEMBER NIKONOWICZ	VOTED
MEMBER O'BRIEN	VOTED
MEMBER VISONE	VOTED
CHAIR COLEMAN	VOTED

March 21, 2017

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

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.

- 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

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.

OLD BUSINESS:

CURRENT BUSINESS:

A representative from Drescher & Malecki LLP will present a summary of the LIDA Independent Auditors' Report for the year ending 2016.

OTHER BUSINESS:

O'Connell Electric Application – Paul Leone will provide information regarding this application.

SBA – Small Business Administration – Information regarding 2017 Annual Small Business Week Luncheon to be held on Friday, May 12, 2017, at Salvatore's Italian Gardens from 12:30PM to 2:00PM.

NEXT LIDA MEETING – APRIL 11, 2017 AT 8:30 AM – Public Hearing – O'Connell Electric

MOTION TO ADJOURN: _____