

LOCAL LAW INTRO NO. 306 - 2023
ACT 160 - 2023

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER, NEW YORK**

Your Committee is in receipt of a communication from the County Executive recommending the approval of a Local Law which, if adopted, would authorize the County of Westchester (“County”) to amend Chapter 836 (the “Purchasing Act”) of the Laws of Westchester County (“LWC”) to, *inter alia*, make changes to various monetary thresholds as they do not reflect present market conditions and have not been adjusted for many years, allow the County to make a gift of any surplus, obsolete or unused vehicles, equipment and/or furniture to a municipality, add sole source provisions consistent with case law, allow the County to become certified as a Green Purchasing Community by requiring use of the GreenNY purchasing specifications used by New York State, and to use the best value alternative to public bidding for purchase contracts pursuant to General Municipal Law §103(1) by adding the rules and procedures utilizing the best value alternative to the Purchasing Act.

Also transmitted herewith for your review and approval is an Act, which, if adopted, would amend the policies and procedures that govern the County’s procurement of goods and services that are not required by state law to be made pursuant to competitive bidding requirements (the “Procurement Policy”), in order to make changes to various monetary thresholds as they do not reflect present market conditions, generally make corrections, revise and update the Procurement Policy and also to add a provision allowing the County to become certified as a Green Purchasing Community by requiring use of the GreenNY purchasing specifications used by New York State.

With respect to the best value alternative, your Committee has been advised that General Municipal Law §103(1) requires the County to adopt a local law authorizing the use of best

value, thus it is appropriate to include rules and procedures utilizing the best value alternative to the Purchasing Act. Further, General Municipal Law §103 provides the County greater flexibility in awarding contracts by authorizing the award of purchase contracts, (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law), on the basis of best value as defined in State Finance Law §163(1)(j).

Your Committee has been further advised that the increased complexity of the goods and services that the County obtains by purchase contracts can at times make it critical to consider selection and evaluation criteria which measure factors other than cost in the strictest sense. Best value procurement allows the consideration of non-price considerations like performance requirements, including, but not limited to, product reliability, efficiency of operation, useful lifespan, and timely performance. In addition, the County is permitted by General Municipal Law §103(16) to “piggyback” on certain government contracts. However, the County cannot use any contracts procured using a best value procurement, until the County itself authorizes the use of the best value alternative.

The Planning Department has advised that, based on its review, the above referenced legislation may be classified as a “Type II” action under the State Environmental Quality Review Act (“SEQRA”) and its implementing regulations, 6 NYCRR Part 617. Therefore, no environmental review is required. Your Committee concurs with this recommendation.

Your Committee has been advised that that the attached Local Law is subject to a permissive referendum, pursuant to Section 209.171(2) of the Laws of Westchester County, because it changes a provision of law relating to public bidding, purchases or contracts.

Consequently, pursuant to Section 209.181 of the Laws of Westchester County, the attached Local Law, if adopted, may not take effect until sixty (60) days after its adoption, assuming that within that time a petition protesting its adoption is not filed by the statutorily required number of qualified electors.

It should be noted that a vote of not less than a majority of the voting strength of your Honorable Board is required to adopt the Local Law and Act.

Your Committee has carefully considered the proposed legislation and recommends that your Honorable Board adopt the attached legislation.

Dated: July 24th, 2023
White Plains, New York

Margaret A. Cigno
~~Be...~~
Dennis Amun
Nancy Bar

Joseph Bill Jones
Dennis Amun
Carol Parle
Dennis Amun
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Nancy Bar

Carol Parle
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COMMITTEE ON

C:tsa 6.26.23

Legislation

Budget & Appropriations

Environment, Energy &
climate

FISCAL IMPACT STATEMENT

SUBJECT: Chapter 836 Amendment

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: _____

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

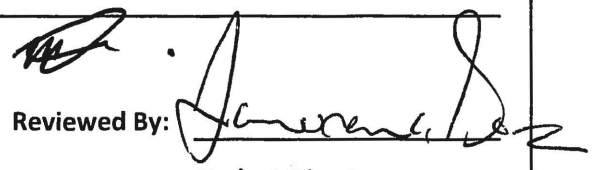
Next Four Years: _____

Prepared by: Michael Dunn

Title: Senior Budget Analyst

Department: Budget

Date: July 5, 2023

Reviewed By: 

Budget Director

Date: 7/5/23

TO: Tami Altschiller
Assistant Chief Deputy County Attorney

FROM: David S. Kvinge, AICP, RLA, CFM
Assistant Commissioner



DATE: July 5, 2023

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR AMENDMENT OF
PURCHASING ACT AND PROCUREMENT POLICY**

PROJECT/ACTION: Adoption of a Local Law that will authorize the County to use the best value alternative to public bidding for purchase contracts pursuant to General Municipal Law §103(1) and amend Chapter 836 (known as the Purchasing Act) of the Laws of Westchester County to update and incorporate current pricing and procedures. The amendment will: add rules and procedures to allow the County to conduct a best value alternative to public bidding for purchase contracts; adjust monetary thresholds to reflect present market conditions; permit the County to make a gift of any surplus, obsolete or unused vehicles, equipment and/or furniture to a municipality; add sole source provisions consistent with case law; and require GreenNY procurement specifications used by New York State to be followed, which will allow the County to become certified as a Green Purchasing Community. In addition, an Act is proposed to amend the policies and procedures that govern the County's procurement of goods and services that are not required by state law to be made pursuant to competitive bidding requirements (known as the Procurement Policy) in order to adjust monetary thresholds to reflect present market conditions, make general revisions, updates and corrections, and add the provision requiring GreenNY procurement specifications to be followed where applicable.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no further environmental review is required because the project/action:

- DOES NOT MEET THE DEFINITION OF AN "ACTION" AS DEFINED UNDER SECTION 617.2(b)**
- MAY BE CLASSIFIED AS TYPE II PURSUANT TO SECTIONS:**
- **617.5(c)(26):** routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
 - **617.5(c)(31):** purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, or other hazardous materials.

COMMENTS: None

DSK/cnm

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Blanca P. Lopez, Acting Commissioner
Claudia Maxwell, Associate Environmental Planner

LOCAL LAW INTRO. NO. 2023 - 306

A LOCAL LAW amending Chapter 836 of the Laws of Westchester County to, *inter alia*, make changes to various monetary thresholds, allow the County to make a gift of any surplus, obsolete or unused vehicles, equipment and/or furniture to a municipality, add sole source provisions, allow the County to become certified as a Green Purchasing Community by requiring use of the GreenNY purchasing specifications used by New York State, and to use the best value alternative to public bidding for purchase contracts pursuant to General Municipal Law §103(1) by adding the rules and procedures utilizing the best value alternative to the Purchasing Act.

BE IT ENACTED by the County Board of legislators of the County of Westchester as follows:

Section 1. The County of Westchester is hereby authorized to use the best value alternative to public bidding for purchase contracts pursuant to General Municipal Law §103(1).

§2. Chapter 836, Sections 836.01, 836.11 and 836.22 of the Laws of Westchester County are hereby amended to read as follows:

Sec. 836.01. - [Repealer] Short title.

[Local Law No. 3-1939 as last amended by Act No. 16-1959 is hereby repealed.] The rules and regulations of this local law shall be known by its historical common name, the Westchester County Purchasing Act.

Sec. 836.11. - [Enactment of provisions.

A local law entitled "An Act Setting Forth Rules and Regulations of the Bureau of Purchase for the Purchase and Sale of All Supplies, Materials and Equipment; the Maintenance and Supervision of Storerooms and Warehouses; and the Sale or Lease of Surplus, Obsolete or Unused Supplies, Materials and Equipment," in relation to including maintenance, repair, rental or service contracts therein, the requirements for competitive bidding on purchases authorizing minor purchases by departments, increasing the amount of emergency purchases by the Purchasing Agent without report to the County Executive and increasing the inventory value of supplies, materials and equipment under the jurisdiction of the Purchasing Agent, is hereby enacted as follows.

Sec. 836.21. -] Competitive bidding.

1. On all purchases of materials, supplies and on all contracts for the purchase or repair of equipment, [of \$10,000.00 or more, or for maintenance or service of equipment at a rate of \$3,000.00 per month or more] including the rental, leasing or licensing of equipment that falls under any monthly monetary limit set forth in section 161.11(1)(a), that require the expenditure of more than the dollar amount established by New York State General Municipal Law Section 103(1) for publicly bidding purchase contracts, the Purchasing Agent shall solicit bids by public advertisement appearing in one or more issues of a daily paper published in the County of Westchester not less than [two]~~five~~ days prior to the date set for opening such bids. Such advertising is not required for perishable food stuffs, medical supplies, livestock, feed, forage, law books and supplements, texts, films and certain other publications, but bids shall be secured if possible from at least three bidders separately engaged in the regular business of supplying such items. The form of advertisement shall be approved by the County Attorney and shall include:
 - a. The place where the proposals may be obtained.
 - b. The place where and the day and hour when the bids will be publicly opened.
 - c. The quantity, quality and specifications of the supplies, materials, equipment or services to be furnished.
2. Proposals for bids shall be in such form as may be prescribed by the Purchasing Agent and shall include, but need not be limited to the following statements:
 - a. All bids shall be enclosed in a sealed envelope addressed to the Purchasing Agent and shall have endorsed thereon the name of the bidder, the time and date of the bid opening and the Bureau of Purchase and Supplies bid number.
 - b. The place where and the day and hour when [thee]~~the~~ bids will be publicly opened.
 - c. The quantity, quality and specifications of the supplies, materials, equipment, maintenance or services to be furnished.
 - d. Each bid submitted shall be accompanied by certified check made payable to the order of the County of Westchester in a sum not more than five percent of the amount of such bid, unless, in the discretion of the Purchasing Agent, [he] it shall be deemed [it] to be [for]in the best interest of the County of Westchester to waive this requirement. Upon the award of the contract to the successful bidder all deposits will be returned, except that of the successful bidder, which will be retained by the Purchasing Agent and returned to the successful bidder when the contract is executed on behalf of the County of Westchester. A performance or maintenance bond and/or a certificate of insurance may, in the discretion of the Purchasing Agent, be required to be signed, executed and delivered by the successful bidder and, if required, said bond or bonds shall be approved by the County Attorney as to form, manner or execution, sufficiency and adequacy.
 - e. Each bid shall contain:
 - i. The name, business address, federal identification or social security number of each bidder.

- ii. A statement to the effect that it is made without any connection with any other person making a bid for the same purpose and is in all respects fair and without collusion or fraud.
 - iii. A statement to the effect that no elected official or other officer or employee or person whose salary is payable in whole or in part from the County Treasury is directly or indirectly interested therein or in the supplies, materials, equipment or services to which it relates or in any portion of the profits thereof. This provision shall not apply in instances of direct or indirect holdings of less than one percent of the stock of a corporation.
3. Any and all bids received which do not conform to the above rules are invalidated.
4. At the time and place designated all bids shall be opened and publicly read by the Purchasing Agent or [his]Purchasing Agent's representative.
5. Bids on all purchases of materials, supplies, and on all contracts for the purchase or repair of equipment [of less than \$10,000.00, or the maintenance, rental or servicing of equipment of less than \$3,000.00 per month],including the rental, leasing or licensing of equipment that falls under the monthly monetary limit set forth in section 161.11(1)(a) that are between the dollar amount established by New York State General Municipal Law Section 103(1) for publicly bidding purchase contracts and \$5,000.01, may be taken without public advertisement but bids shall be secured, if possible, from at least three bidders separately engaged in the regular business of furnishing supplies, materials, equipment and services of the type and kind required. All such bids received shall be duly considered in awarding the contract.
6. The Purchasing Agent shall, without other consent or approval, award the contract to the lowest responsible bidder; provided, however, that he may reject any or all bids, or any portion of a bid, if he shall deem it for the interest of the County to do so. In the case of tie bids the award shall be decided by the Purchasing Agent by lot, except that residents of the County of Westchester shall have preference.
7. Purchases of [~~\$1,000.00~~]\$5,000.00 or less may be made by the Purchasing Agent without competitive bidding[, provided that such purchases shall not exceed \$15,000.00 in any one month,] In determining whether a purchase is an expenditure within the threshold amount defined by this subsection, the Purchasing Agent shall reasonably consider the expected aggregate amount of all purchases of the same commodities and/or services to be made within the twelve month period commencing on the date of purchase, except that purchases of postage supplies from the United States Post Office, minor repairs, including parts to equipment, and such other items where competitive bids are impossible to obtain, shall be excluded from [the monthly] these limitations.
8. With authorization in writing by the Purchasing Agent, the head of any department or his/her duly authorized designee may authorize purchases of not more than \$[150]500.00 per contract for the purchase of materials or supplies or repairs or for the maintenance, rental or services of equipment without competitive bidding, provided that such purchases by said department shall not exceed limitations authorized by the Purchasing Agent as approved by the [Budget Director]Commissioner of Finance. However, the Commissioner of Finance may authorize in writing, when the Commissioner of Finance determines it is in the best interests of the County, the head of a department or their duly authorized designee,

to make purchases of the kind authorized by this subsection 8 in an amount not to exceed the amount of the dollar limit placed on the Purchasing Agent in subsection 7 above. In making such purchases, the authorized person shall make reasonable efforts to obtain the best possible price, such as by seeking quotes from at least three providers. Any such contract shall be evidenced by an order using the form and procedure prescribed by the Purchasing Agent, and a copy of said order shall be delivered within two working days of the date of the purchase to the Purchasing Agent. Orders made pursuant to the provisions of this subdivision shall be paid for in the manner provided for the payment of all claims against the County.

9. In addition to the power granted by subsection 7[,] hereof, and notwithstanding any other County law regarding emergency contract procedures, emergency purchases and maintenance, repair, rental or service contracts to remedy a breakdown in service or to safeguard life or property may be made without competition, but if any such emergency purchase or contract exceeds \$[1,500]3,000.00, the Purchasing Agent shall file a complete report thereon with the County Executive.

10. On any purchases the Purchasing Agent may utilize the terms of a [state or federal government general service]contract let by the United States of America or any agency thereof, any state or any other political subdivision or district therein if such contract was let to the lowest responsible bidder or on the basis of best value in a manner consistent with New York State Law and purchasing from such contracts is permitted by the provisions of the New York State General Municipal Law, including but not limited to New York State General Municipal Law Section 104 and Section 103(16) where the terms are to the advantage of the County. The Purchasing Agent shall utilize applicable guidance published by the Office of the New York State Comptroller for such procurement, including but not limited to guidance on "piggybacking" pursuant to New York State General Municipal Law Section 103(16).

11. [In accordance with the requirements of § 104-a of the New York General Municipal Law, the Purchasing Agent may, in his or her discretion, when purchasing products with and without significant recycled content, pay up to ten percent above the lowest responsible bid for the purchase of comparable recycled products manufactured from secondary materials, or pay up to 15 percent above the lowest responsible bid for the purchase of comparable recycled products where at least 50 percent of the secondary materials used in the manufacture of such recycled products are generated from the waste stream of New York State. The term "recycled product" shall be defined as it is set forth in § 104-a of the New York General Municipal Law. The term "secondary materials" shall be defined as it is set forth in Subdivision 1 of § 261 of the New York Economic Development Law. In the event that equal bids are received for comparable products where one product has no significant recycled content and another product contains post-consumer materials, the Purchasing Agent may give preference to the product containing post-consumer materials. In addition, in the event that equal bids are received for comparable recycled products and one recycled product contains post-consumer materials and the other does not, the Purchasing Agent may give preference to the recycled product containing post-consumer material. Post-consumer materials shall be defined as those materials that are commonly source-separated and collected in municipal recycling programs. The Purchasing Agent shall consult with the Commissioner of Environmental Facilities to develop a list of post-consumer materials,

which shall be updated as necessary in the future to correctly reflect any significant changes in the materials commonly source-separated and collected separately in municipal recycling programs. This provision of law shall expire on December 6, 1995.]The Purchasing Agent may, in the Purchasing Agent's discretion, purchase comparable recycled products and pay a premium over the lowest responsible bid for a comparable non-recycled products in accordance with the provisions of New York State General Municipal Law Section 104-a.

Sec. 836.21. - Best Value Alternative Procedures

1. The following definitions shall be used for the purposes of this section:

- A. "Responsible" or "responsibility" means the financial ability, legal capacity, integrity, and past performance of a person or business entity and as such terms have been interpreted relative to public procurements.
- B. "Responsive" means an offerer meeting the minimum specifications or requirements as prescribed in a solicitation for commodities or services by the Purchasing Agent.
- C. "Specification" or "requirement" means any description of the physical or functional characteristics of commodities, supplies, materials, equipment or technology and/or services related to same and/or the nature of same, any description of the work to be performed, the service or products to be provided, the necessary qualifications of the offerer, the capacity and capability of the offerer to successfully carry out the proposed contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform the work. It may include a description of any obligatory testing, inspection or preparation for delivery and use, and may include federal and/or New York State required provisions and conditions where the eligibility for federal and/or New York State funds is conditioned upon the inclusion of such required provisions and conditions. Specifications shall be designed to enhance competition, ensuring the commodities or services of any offerer are not given preference except where required or permitted by applicable New York State Law.
- D. "Offer" means the response submitted by an offerer to a Best Value purchase solicitation by the Purchasing Agent.
- E. "Offerer" means a person or business entity (e.g., corporation or partnership) making an offer in response to a Best Value solicitation by the Purchasing Agent.
- F. "Procurement record" means documentation of the decisions made and the approach taken in the procurement process.
- G. "Best value" means the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerers that are small businesses, certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the New York State Executive Law or service-disabled veteran-owned business enterprises as defined in subdivision one of section three hundred sixty-nine-h of the New York State Executive Law to be used in evaluation of offers for awarding of contracts for services.

- H. “Purchasing Agent” means the Purchasing Agent of Westchester County.
 - I. “Purchase Contract” means a contract to procure supplies, materials, equipment or technology and/or services related to same, including but not limited to installation and maintenance, excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law.
2. General Authorization: When the Purchasing Agent and the department head requesting a purchase contract that would otherwise be subject to public bidding in accordance with New York State General Municipal Law Section 103(1) determine that it would be in the best interests of the County in writing, the Purchasing Agent, subject to the conditions set forth in this section, is authorized to solicit offers from responsible offerers in accordance with written specifications and/or requirements utilizing best value as the basis of the contract award. The contract shall be awarded to the most responsive and responsible offerer.
 3. General conditions for use. All purchase contracts of the County to be awarded by best value shall be awarded by a request for competitive offers that is consistent with the applicable provisions of New York State Law, including but not limited to, New York State General Municipal Law Section 103(1) and New York State Finance Law Section 163. If the funding source (federal or state) prefers the best value award methodology; the best value award methodology may be used.
 4. The following procedures and rules shall be used by the Purchasing Agent in conducting Best Value purchases:
 - A. If the product or service has been previously purchased by the County through a competitive bid, awarded to the lowest responsible bidder, it shall continue to be purchased in that manner unless issues regarding quality, cost and efficiency or the ability to attract a sufficient number of bidders has been documented from previous purchases.
 - B. A determination in writing shall be made by the Purchasing Agent and department head, copies of which shall be maintained in their respective procurement files, detailing the reasons why a best value award is appropriate; the reasons it will benefit the County; and specifying the evaluation criteria to be included in the solicitation. The evaluation criteria shall be included in the procurement record prior to the issuance of the request for competitive offers.
 - C. Where the basis for award is the best-value offer, the Purchasing Agent and department head shall document, in the procurement record and in advance of initial receipt of offers, the determination of the evaluation criteria to be used for each procurement, which shall be objective and quantifiable whenever possible, and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted.
 - D. Prior to award of a contract on the basis of best value, the Purchasing Agent shall make a procurement record for each best value purchase that at a minimum shows that: (1) the

offerer is responsive and responsible; and (2) the Purchasing Agent applied objective and quantifiable standards such as cost-benefit analysis, whenever possible, to determine that the offer optimizes quality, cost and efficiency or a written justification if the Purchasing Agent bases a best value award on criteria that are not objective and quantifiable (hereinafter the "Best Value Purchasing Record").

- E. The decision to award a contract on the basis of best value must be based on objective and quantifiable analysis, such as a cost-benefit analysis, whenever possible. In evaluating and determining to accept a higher priced offer, the Purchasing Agent and department head for which the purchase is being made shall use a cost-benefit analysis to show quantifiable value or savings from non-price factors that offset the price differential of the lower price offers.
- F. The Purchasing Agent may utilize the following criteria for evaluation of a Best Value purchase:
- a. Purchase price
 - b. Financing (if applicable) and only to the extent permitted by applicable law
 - c. Storage, maintenance, insurance, disposal fees and other operational costs
 - d. Added services at no additional cost to the County
 - e. Buy America provision (if required by federal or state grant funding source)
 - f. Product warranty
 - g. Product energy usage
 - h. Product water usage
 - i. Other product or service environmental considerations
 - j. Product or service satisfaction of performance requirements
 - k. Proposed schedule/delivery time frame
 - l. Additional training costs to be incurred by the County
 - m. Compatibility of proposed equipment and current equipment, operational issues related to necessary retrofitting and costs (if any) of spare parts inventory necessary
 - n. Contractor experience with similar projects
 - o. Contractor's record of completion on schedule or on-time delivery
 - p. Contractor's record of compliance with material and workmanship requirements
 - q. Contractor's record of safety
 - r. Contractor's hours of operation for obtaining technical assistance, repairs, and maintenance

- s. If the participation of small businesses, certified minority- or women-owned business enterprises (“MWBE”) as defined in subdivisions one, seven, fifteen and twenty of Section 310 of the New York State Executive Law or service-disabled veteran-owned business enterprises as defined in subdivision one of Section 369-h of the New York State Executive Law are of a concern to the County regarding procurement, the County may take the status of such business into consideration in evaluation of the most responsive offer

- G. A request for competitive offers shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement. The best value specification shall describe the general manner in which the evaluation and award of offers will be conducted and identify the relative importance or weighting of price and non-price factors.

- H. Adequate public notice of the invitation for offers shall be given, not less than 5 calendar days prior to the date set forth therein for the opening of sealed written competitive offers. Such notice shall include publication in the newspaper(s) of general circulation as designated by the Board of Legislators. The public notice shall state the place, date, and time of the opening of offers.

- I. Offers shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for offers. The amount of each offer, and such other relevant information as the Purchasing Agent deems appropriate, together with the name of each offerer, shall be recorded by the Purchasing Agent or designee (hereinafter the “Record of Offers”); the Record of Offers and each offer shall be open to public inspection except to the extent that any information in an offer may be exempt from public disclosure under Article 6 of the New York Public Officers Law (e.g. are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise). The Record of Offers shall become part of the Best Value Purchasing Record.

- J. Offers shall be evaluated based on the requirements set forth in the invitation for offers.

- K. Correction or withdrawal of inadvertently erroneous offers before offer opening, or cancellation of awards or contracts based on such offer mistakes, may be permitted where appropriate. Mistakes discovered before offer opening may be modified or withdrawn by written notice, which may include email, to a person or persons designated in the invitation for offers which is received prior to the time set for offer opening. After offer opening, correction or withdrawal of offers shall not be permitted. After offer opening, no changes in offer prices or other provisions of offers prejudicial to the interest of the County or fair competition shall be permitted, except that an offerer alleging a material mistake of fact may be permitted to withdraw the offer if:
 - a. The mistake is clearly evident on the face of the offer document, but the intended correct offer is not similarly evident; or

- b. The offerer submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit correction or withdrawal of offers, or to cancel awards or contracts based on offer mistakes, shall be supported by written determination made by the Purchasing Agent which shall become part of the Best Value Purchasing Record.

- L. If the Purchasing Agent and County department both elect to award a purchase contract on the basis of best value, the Purchasing Agent and County department must be prepared to show that: (1) the offerer is responsive and responsible; and (2) the Purchasing Agent and County department applied objective and quantifiable standards to determine that the offer optimizes quality, cost and efficiency in accordance with these procedures.

§3. Chapter 836, Sections 836.31, 836.32, and 836.41 of the Laws of Westchester County are hereby amended to read as follows:

Sec. 836.31. - Sale or lease of surplus, obsolete or unused supplies, materials and equipment.

1. Surplus, obsolete or unused supplies, materials, or equipment in any storeroom or warehouse or not required by any agency of the county, except: computers and computer equipment; surplus or obsolete paratransit/shuttle type buses; shall be surrendered to the Purchasing Agent and shall be sold or leased by the Purchasing Agent[him] as provided for in subsections 2., 3., 4. and 5. of this section.
2. Such supplies, materials or equipment as set forth in subsection 1. of this section may be sold or leased to the highest responsible bidder at public auction or after receipt of bids and after advertisement in at least two successive issues of a daily paper published in the County of Westchester.
3. Whenever in the opinion of the Purchasing Agent, the value of such item as mentioned in subsection 1. of this section does not exceed the sum of \$[1,000.00] 3,000.00, he may sell or lease the same to the highest bidder without public advertisement. Bids on such items must be obtained from at least three bidders, whenever possible. If, however, only one bid is submitted to the Purchasing Agent, the sale or lease shall be made at a price not less than the value fixed by the Purchasing Agent.
4. All surplus, obsolete or unused materials, supplies and equipment, which, in the opinion of the Purchasing Agent and the head of the department involved, are not salable, may be destroyed or otherwise disposed of under the direction of the Purchasing Agent. This provision shall not apply to public records or computers and computer equipment or surplus or obsolete paratransit/shuttle type buses, subject to the following exception, if pursuant to Section 131.41 of the Laws of Westchester County, the Commissioner of Public Works and Transportation determines in his or her reasonable opinion that any particular paratransit/shuttle type bus is not capable of safe operation or that there is no interest in any

particular bus, then same shall be returned to the jurisdiction of the Purchasing Agent and disposed of by the Purchasing Agent in accordance with this section.

5. Notwithstanding the above, the Purchasing Agent is hereby authorized to sell to the MTA Bus Company, a corporate subsidiary of the Metropolitan Transportation Authority a New York State public benefit corporation, up to 84 transit buses acquired by the County in 1995 and 1996. Each bus shall be made available for sale only when and if the County Commissioner of Transportation determines that it is no longer required for public transit service and is surplus to the needs of Westchester County. The MTA Bus Company shall pay to the County a price not to exceed \$2,600.00 for each bus accepted.
6. Notwithstanding the above, the Purchasing Agent is hereby authorized to convey transit vehicles to Federal Transit Administration ("FTA") grant recipients in accordance with the FTA's requirements. This section only applies to transit vehicles that were purchased with the assistance of grants from the FTA and have not yet exceeded their useful life under current FTA standards. All such conveyances are subject to the approval by Act of the County Board and subsequent approval by the FTA.
7. Notwithstanding the above, the Purchasing Agent is hereby authorized to scrap diesel-powered buses to enable the County to receive a discount from the New York State Energy Research and Development Authority on the purchase price of new electric-powered buses under the New York State Truck Voucher Incentive Program. Scrappage must be performed by a State-approved vehicle dismantler facility. A vehicle is considered "scrapped" when rendered inoperable and available for recycling, by drilling a three-inch diameter hole in the engine block and disabling the chassis by cutting the vehicle's frame rails or integrated body completely in half. The County may also receive a payment from the vehicle dismantler for the scrap metal value of the bus.
8. Notwithstanding the above, in the event the County participates in a grant program which will result in a reduction of carbon emissions, the Purchasing Agent is hereby authorized, if necessary to comply with the grant program, to dispose of surplus, obsolete or unused materials, supplies and equipment in such manner as may be required pursuant to the grant program.
9. Notwithstanding the above, the County may make a gift of any surplus, obsolete or unused vehicles, equipment and/or furniture to a municipality located within the County of Westchester that does not have any outstanding bonds used to finance the purchase of said items or is subject to any grant restrictions that would prohibit such gift in a grant used to purchase such items. Such gifts shall be made in a form approved by the County Attorney and subject to the approval of the Board of Legislators.

Sec. 836.32.- Sale or lease of surplus, obsolete, or unused supplies, materials and equipment of Westchester Community College.

1. Surplus, obsolete or unused supplies, materials or equipment as determined by the President of the Westchester Community College, or the President's[his] duly authorized designee, may be sold or leased to the highest responsible bidder at public auction or after the receipt of bids and after advertisement in at least two successive issues of a daily newspaper published in the County of Westchester, provided, however, that, except as provided in

subdivision 2. below, no such supplies, materials or equipment shall be sold or leased without the prior approval of the Board of Trustees of the Westchester Community College.

2. Whenever in the opinion of the President of the Westchester Community College, or the President's[his] duly authorized designee, and with the concurrence of the Westchester Community College Senior Buyer, the value of such items as mentioned in subdivision 1. of this section does not exceed the sum of \$1,000.00, he or she may sell or lease the same to the highest bidder without public advertisement. Bids on such items must be obtained, whenever possible, from at least three bidders, provided, however, if only one bid is submitted, the sale or lease shall be made at a price not less than the value fixed by the President or the President's[his] duly authorized designee.
3. All surplus, obsolete or unused materials, supplies and equipment described in subdivision 2. of this section which are not saleable or leaseable may be destroyed or otherwise disposed of with the concurrence of the Westchester Community College Senior Buyer. This provision shall not apply to public records.

Sec. 836.41. - Storerooms and warehouses.

1. The Purchasing Agent is hereby authorized to establish and maintain storerooms located at Grasslands and other such locations as from time to time shall become necessary, upon approval by the [Budget Director]Commissioner of Finance.
2. The Purchasing Agent is authorized and directed to keep all departmental stocks to a minimum consistent with reasonable and uninterrupted service of the several County departments. However, in the event of anticipated or existing supply chain disruptions, the Purchasing Agent may allow the creation of reserves and buffers of departmental stocks necessary for the reasonable and uninterrupted service of County departments.
- [3. The total storeroom inventory of all supplies, materials and equipment under the jurisdiction of the Purchasing Agent shall at no time exceed the sum of fifty thousand dollars (\$50,000.).]

§4. Chapter 836, Sections 836.43 and 836.51 of the Laws of Westchester County are hereby

amended to read as follows:

Sec. 836.43. - Sole Source

1. A County Department may recommend to the Bureau of Purchase and Supplies a sole source of procurement of goods and/or services when, after reasonable investigation, the County Department determines in writing that only one practicable source for the required goods or service exists.
2. The County Department and the Bureau of Purchase and Supply shall keep a record of all sole source procurements, specifying each contractor's name, the amount and type of each contract, a description of the goods or services procured, and the basis for the

determination that the contractor was the only practicable source for the required goods or services.

Sec. 836.51. - [When effective]Green Community Purchasing.

[This chapter shall take effect 60 days after its adoption.]

Where the County is procuring a commodity or service in accordance with this Chapter, whether by competitive bid or other procedure required under this Chapter, that is the subject of a GreenNY procurement specification that has received final approval of the GreenNY Council pursuant to New York State Executive Order No. 22 (2022), the Purchasing Agent shall follow the GreenNY procurement specifications to the maximum extent practicable and where cost is reasonably competitive as defined in New York State General Municipal Law §104-a.

§5. The Clerk of the Board shall cause a notice of this Local Law to be published at least once a week for two successive weeks, the first publication of which shall be had within ten days after such local law is adopted, in the official newspapers published in the County of Westchester, said notice to contain the number, date of adoption and a true copy of the Local Law, and a statement that this Local Law changes a provision of law relating to the sale, exchange or leasing of County property and is therefore subject to the provisions of Section 209.171(7) of the Westchester County Administrative Code providing for a permissive referendum.

§6. This local law shall take effect sixty (60) days after its adoption subject to the provisions of Section 209.181 of the Westchester County Administrative Code.

ACT NO. 2023 -160

AN ACT amending the policies and procedures that govern the County of Westchester's procurement of goods and services that are not required by state law to be made pursuant to competitive bidding requirements, in order to make changes to various monetary thresholds, generally make corrections, revise and update the Procurement Policy and also to add a provision allowing the County to become a Green Purchasing Community.

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. The policies and procedures adopted by Act No. 23-1992, as amended by Act No. 56-1999, Act No. 229-2008, Act No. 2011-112, and Act No. 2012-93, which govern the procurement of goods and services by the County of Westchester ("County") that are not required by state law to be made pursuant to competitive bidding requirements (the "County Procurement Policy"), are hereby amended as follows:

(a) The text of Procurement Policy Section 3(a)(i) is revised as follows:

procurements made pursuant to General Municipal Law §§103, [General Municipal Law §]104, 109-b and [General Municipal Law §]120-w, State Finance Law §[175-b]162, Correction Law §186 or Chapter 836 of the Laws of Westchester County;

(b) The text of Procurement Policy Section 3(a)(ii) is revised as follows:

procurements made for the services of a licensed architect, professional engineer or land surveyor licensed and registered in the State of New York pursuant to the Westchester County Administrative Code §277.81 - §277.121 and the rules and procedures enacted by the Board of Legislators for prequalification and selection pursuant to §161.31 of the Westchester County Charter;[.]

(c) The text of Procurement Policy Section 3(a)(x) is revised as follows:

procurements for the services of lawyers, other than those specified in (xv.) below, accountants, auditors, financial advisors, and, except for those specified in (ii) above, licensed architects, professional engineers or land surveyors licensed and registered in the

State of New York, [provided that the County complies with the procedures specified in Section 7];

(d) The text of Procurement Policy Section 3(a)(xiv) is revised as follows:

Any procurement for the purpose of entering into a contract or contracts with not for profit organizations for the purposes of providing aid, care and support to persons in need of public assistance; [and]

(e) The text of Procurement Policy Section 3(a)(xv) is revised as follows:

Contracts for the engagement of attorneys for representation in Civil litigation which are approved by an Act of the County Board in accordance with §297.31 of the Laws of Westchester County[.];

(f) The text of the Procurement Policy Section 3(a)(xvi) is revised as follows:

Contracts with Recipients for the disbursements of grants or loans under the Community Development Block Grant Program[.];

(g) The text of the Procurement Policy Section 3(a)(xvii) is revised as follows:

Any procurement for the purpose of entering into a contract or contracts with persons to provide care, treatment, counseling, referral or rehabilitative or preventative services to [the mentally ill, mentally retarded, developmentally disabled and those suffering from the disease of alcoholism or substance abuse] individuals with mental illness, intellectual/developmental disabilities, and those experiencing addiction and/or substance abuse;

(h) The text of the Procurement Policy Section 3(a)(xviii) is revised as follows:

Any procurement for the purpose of entering into a contract or contracts with persons for the creation and support of recreation projects, youth service projects and other appropriate programs and services for the prevention of delinquency and youth crime and the advancement of the moral, physical, mental and social well being of the youth of Westchester County[.];

(i) The text of the Procurement Policy Section 3(a)(xvix) is revised as follows:

Any procurement for the purpose of entering into a contract with persons to provide direct services to senior citizens including care, counseling, referral, case management, social and nutritional support, and other essential outreach services[.];

(j) The text of the Procurement Policy Section 3(a)(xx) is revised as follows:

Contracts with banks and financial institutions licensed or chartered to do business in the State of New York for the deposit of funds, including Trust Fund Agreements, Escrow Agreements and other fiduciary services provided that such agreements shall be consistent with (i) the requirements of applicable law; (ii) any policies now or hereafter established by the Board of Legislators relating to such Agreements[.]; and

(k) The text of Procurement Policy Section 4 is revised as follows:

(a) [The “Bureau” means the Bureau of Purchase and Supply.

(b)] “Person” shall mean any natural person, business, partnership, corporation, association or other organization, entity or group of individuals.

([c]b) “Procuring officer” shall mean the head of the department or the individual or individuals authorized by the head(s) of the department(s) undertaking the procurement[and with respect to those matters delegated to the Bureau of Purchase Supply pursuant to Section 161.11(a) of the Laws of Westchester County, the Purchasing Agent].

(l) The text of Procurement Policy Section 5 is revised as follows:

Section 5 Procurements of \$150,000 or Less [Below \$75,000].

(a) For a procurement of goods or services reasonably expected to cost \$35,000 or less [than \$20,000.00], the procuring officer shall exercise sound business judgment and shall endeavor, to the extent time permits, to solicit written or oral quotations from no fewer than three persons customarily providing such goods or services and, if deemed appropriate, to inquire as to the qualifications and experience of such persons. If oral quotations are obtained, the procuring officer shall record the names and addresses of all persons from whom quotations were sought, the names of the individuals submitting quotations, and the date and amount of each quotation.

(b) For a procurement of goods or services reasonably expected to cost \$150,000 or less [than \$75,000], but at least \$[20,000]35,000.01, the procuring officer shall solicit written quotations from no fewer than three persons customarily providing such goods or services and, if deemed appropriate, shall inquire as to the qualifications and experience of such persons. The procuring officer shall record the names and address of all persons from which such written quotations were sought and shall keep copies of all such written quotations received.

(c) The procuring officer shall consider the quotations offered, if applicable, evaluate each offere[o]r’s qualifications and experience, and determine the most advantageous offer. [Except as otherwise provided in Section 8, t]The procur[ement]ing officer shall then recommend in writing to the Board of Acquisition and Contract approval of a contract with the offere[o]r making the most advantageous offer. If the procuring officer

recommends an offere[o]r who did not offer the lowest net cost or, if a net revenue is projected, the greatest net revenue, the procuring officer shall, in such recommendation, explain why the proposed contract award furthers the purposes of this policy.

(m) The text of Procurement Policy Section 6(a) is revised as follows:

(a) A procurement of goods or services reasonably expected to cost more than \$150,000[75,000 or more] shall conform to the procedures set forth in this section.

(n) [Section 7. Professional Service Procurements.

(a) For any procurement specified in Section 3(a)(x), the procuring officer shall solicit quotations, statements or other information regarding their experience, qualifications and capability to perform the proposed services from no fewer than three persons customarily performing such services. If the procurement is expected to cost \$20,000 or more, such quotations, statements or information shall be in writing, and if more than \$75,000, a request for qualifications or a request for proposals shall be issued and qualification statements or proposals shall be received. The procuring officer shall recommend in writing to the Board of Acquisition and Contract approval of a contract with the person whose quotation or proposal is determined by the procuring officer to be the most advantageous to the County.

(b) If oral quotations or statements are obtained, the procuring officer shall record the names and addresses of all persons from whom quotations or statements were sought, the names of the individuals submitting quotations or statements, and the date and a summary of each quotation or statement.]

(o) [Section 8. Bureau and Medical Center Procurements.

(a) With respect to procurements for the purchase, rental, maintenance or repair of supplies, materials and equipment and services incidental thereto, other than those for the Department of Hospitals, the Bureau of Purchase and Supply shall be responsible for such procurement as provided in Section 161.11(a) of the Westchester County Charter. Any procurement made by the Bureau of Purchase and Supply which is not required to be competitively bid or procured pursuant to any alternative procedures specified in Chapter 836 of the Laws of Westchester County (Purchasing Act) shall be procured by the Bureau of Purchase and Supply in accordance with the requirements of this policy, except that the award of all such contracts shall be made, if at all, by the Purchasing Agent in accordance with the requirements of applicable law, including Chapter 161 and Chapter 836 of the Laws of Westchester County.

After the procuring officer has made a determination of the most advantageous offer on proposal in accordance with the procedures contained in this policy, the Purchasing Agent may award a contract to the person making such offer or proposal, subject to subsection (c) below.

(b) With respect to procurements for the purchase, rental, maintenance or repair of supplies, materials and equipment and services incidental thereto for the Department of Hospitals, the Commissioner of Hospitals or his duly authorized designee shall be responsible for such procurement as provided in Section 161.11(a) of the Westchester County Charter. After the procuring officer has made a determination of the most advantageous offer or proposal in accordance with the procedures contained in this policy, the Commissioner of Hospitals or his duly authorized designee may award a contract to the person making such offer or proposal, subject to subsection (c) below.

(c) If the procuring officer determines that an award should be made to a person who did not offer the lowest net cost or, if a net revenue is projected, the greatest net revenue, the procuring officer shall make a written determination of why the proposed contract award furthers the purposes of this policy. The procuring officer, in addition to and not in limitation of any other recordkeeping requirements specified in this policy, shall maintain a separate file, available for inspection, containing copies of all such written determinations.]

(p) Section 7[9]. Sole Source Procurements.

(a) A procuring officer may recommend [to the Board of Acquisition and Contract] a contract when, after reasonable investigation, the procuring officer determines in writing that only one practicable source for the required goods or service exists.

(b) The procuring officer shall keep a record all sole source procurements, specifying each contractor's name, the amount and type of each contract, a description of the goods or services procured under each contract, and the basis for the determination that the contractor was the only practicable source for the required supply or service.

(q) Section 8[10]. Accelerated Procurements.

(a) When, due to circumstances which cannot reasonably be avoided, the time required to comply with a requirement of this policy could be construed to affect or endanger the health, safety, or well being of persons or their property, the procuring officer may make an accelerated procurement without following that requirement. The procuring officer in any recommendation for the award of a contract on an accelerated procurement basis, shall first explain the reasons and circumstances requiring such accelerated procurement.

(b) The procuring officer shall keep a record of each accelerated procurement, specifying each contractor's name, the amount and type of each contract, a description of the goods or service procured under each contract, and the basis for determining the need for an accelerated procurement.

(r) Section 9[11]. Procurement Records.

The procuring officer shall maintain a procurement file for each procurement containing, as applicable, a copy of the request for proposals or request for qualifications, copies of responses from all vendors, including proposals, qualification statements or other materials, a copy of any recommendation made, and proposed resolution submitted, to the Board of Acquisition and Contract and any determination or record required in this policy to be made in writing.

(s) Section 10[12]. Required Representation.

The following representation shall be inserted in every contract; or shall accompany any claim or request for payment to be made as a result of a procurement made pursuant to this policy:

“ _____ (Name of Contractor or Consultant[(hereinafter the “Vendor” “Consultant”, etc.)]) represents and warrants that it has not employed or retained any person other than a bona fide full-time salaried employee working solely for [the (“Vendor”, “Consultant”, etc.)] Contractor/Consultant to solicit or secure a contract with the County of Westchester for the goods or services specified herein, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full time salaried employee working solely for [the (“Vendor”, “Consultant”, etc.)] Contractor/Consultant any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of such contract[.], provided, however, Contractor/Consultant may alternatively certify that such fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of such contract, is part of the standard method of compensation for the employee.”

(t) Section 11[13]. Federally-Funded Procurements

(a) Definitions

- (i) “Federal Procurement Requirements” shall mean any and all federal laws, regulations, rules, guidance, instructions, or grant terms applicable to a Federally-Funded Procurement.
- (ii) “Federally-Funded Procurement” shall mean a procurement that is funded, in whole or in part, by federal funds.
- (iii) “Ordinary County Procurement Requirements” shall mean all of the policies and procedures that would be applicable to a procurement if it was not a Federally-Funded Procurement.

- (b) Each Federally-Funded Procurement shall be made in accordance with the Federal Procurement Requirements.

(c) In addition to, and not in limitation of, the requirements of paragraph (b) of this Section, each procurement:

(i) funded by the Federal Transit Administration (“FTA”) shall follow all applicable rules and procedures set forth in FTA Circular 4220.1F or any FTA Circular for Third Party Contracting Guidance that should supersede it, including, but not limited to the following, in that each such procurement shall:

- 1.) not utilize any prequalification of vendors or products;
- 2.) not utilize any geographic preference;
- 3.) only be made from a vendor that the Procuring Officer has determined, in writing, is responsible;
- 4.) for a competitive procurement, be permitted to be awarded on the basis of the FTA’s ‘best value’ criterion;
- 5.) for a sole source procurement, be documented in accordance with the applicable FTA procedures and requirements;
- 6.) for a procurement below the FTA’s ‘micro-purchase’ threshold, be made in accordance with the applicable FTA procedures and requirements;
- 7.) for a procurement below the FTA’s ‘small purchase’ threshold, be made in accordance with the applicable FTA procedures and requirements;
- 8.) for a procurement above the FTA’s ‘small purchase’ threshold, be made in accordance with the applicable FTA procedures and requirements;
- 9.) for a revenue contract, be awarded utilizing competitive selection procedures;
- 10.) result in a contract that shall include all contract clauses required by applicable FTA rules; and
- 11.) be documented by the keeping of all records required by applicable FTA rules.

(d) Notwithstanding paragraphs (b) and (c) of this Section, each Federally-Funded Procurement shall be made in accordance with the Ordinary County Procurement Requirements to the extent that the Ordinary County Procurement Requirements do not conflict with the requirements of paragraphs (b) and (c) of this Section.

(u) There shall be a new Section 12 as follows:

Section 12. Green Purchasing Community

Where the County is procuring a commodity or service in accordance with this Procurement Policy that is the subject of a GreenNY procurement specification that has received final approval of the GreenNY Council pursuant to New York State Executive

Order No. 22 (2022), the Procuring Officer shall follow the GreenNY procurement specifications to the maximum extent practicable and where cost is reasonably competitive as defined in New York State General Municipal Law §104-a.

§2. This Act shall take effect immediately.

STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

I HEREBY CERTIFY that I have compared the foregoing Local Law Intro. No. 306 - 2023, and Act No. 160 - 2023, with the originals on file in my office, and that the same are correct transcripts therefrom, and of the whole, of said original Local Law, and Act, which were duly adopted by the Westchester County Board of Legislators, of the County of Westchester on September 18, 2023, and approved by the County Executive on September 19, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 20th day of September, 2023.



Malika Vanderberg

The Clerk of the Westchester County Board of Legislators

County of Westchester, New York

