

ACT NO. 2023-\_\_\_\_\_

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.