

## A RESOLUTION ADOPTING THE LAND BANK'S PROCUREMENT POLICY

WHEREAS, on January 31<sup>st</sup>, 2017 the Board of Directors of the Nassau County Land Bank Corporation duly convened a meeting and a quorum existed, and;

WHEREAS, the Board of Directors was requested to implement a Procurement Policy in accordance with the New York Public Authorities Law §2824(1)(d), and;

WHEREAS, the Board of Directors members then present voted affirmatively and unanimously in favor of said Procurement Policy; now, therefore, be it

RESOLVED, that effective immediately the Nassau County Land Bank Corporation has adopted the Procurement Policy attached hereto:



# NASSAU COUNTY

## LAND BANK CORPORATION

### PROCUREMENT POLICY

#### SECTION 1. PURPOSE AND AUTHORITY.

The purpose of this document is to outline the procurement policy (the "Policy") of the Nassau County Land Bank Corporation (the "Land Bank") applicable to the procurement of goods and services paid for by the Land Bank for its own use and benefit in accordance with New York Public Authorities Law §2824(1)(d). This Policy is intended to assure the prudent and economic use of the Land Bank's funds, 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.

#### SECTION 2. DEFINITIONS.

As used herein, the following terms shall have the meaning set forth below:

- a) "**Land Bank**" shall mean the Nassau County Land Bank Corporation.
- b) "**Board**" shall mean the Board of Directors of the Land Bank.
- c) "**Chair**" shall mean the Chair of the Board.
- d) "**Executive Director**" shall mean the Executive Director of the Land Bank.
- e) "**Executive Law**" shall mean the New York State Executive Law as amended from time to time.
- f) "**Personal Services**" shall mean any services performed for the Land Bank for a fee or other compensation, including legal, accounting, management consulting, investment banking, financial custody, investment management, construction management, construction, repair, planning, training, statistical, research, public relations, architectural, engineering, surveying or other consulting, professional or technical services. Personal Services shall not include any services performed for the Land Bank by its employees within the scope of their employment responsibilities and shall not include any services performed for the Land Bank by Nassau County employees within the scope of an agreement providing for such services.
- g) "**Procurement Contract**" shall mean any agreement for the acquisition of goods or services of any kind.
- h) "**Outside Contractor**" shall mean a person, firm or corporation performing Personal Services for the Land Bank pursuant to a written agreement.

i) **"MWBE Division"** shall mean the division of minority and women's business development in the New York State Department of Economic Development.

j) **"MWBE Threshold Contract"** shall mean:

i. a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the Land Bank is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials, or any combination of the foregoing to be performed for, or rendered or furnished to the Land Bank or;

ii. a written agreement in excess of one-hundred thousand dollars (\$100,000.00) whereby the Land Bank is committed to expend or does expend funds for construction, demolition, replacement, major repair or renovation of real property and improvements thereon. Solely for the purpose of providing the opportunity for participation by certified businesses in the performance of MWBE Threshold Contracts, MWBE Threshold Contracts shall also include leases of real property by the Land bank to a lessee where: the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon by such lessee; and the cost of such construction, demolition, replacement, major repair or renovation of real property and improvements thereon shall exceed the sum of one hundred thousand dollars (\$100,000.00).

k) **"Minority-Owned Business Enterprise"** shall have the same meaning herein as is set forth in Executive Law § 310(7).

l) **"Women-Owned Business Enterprise"** shall have the same meaning herein as is set forth in Executive Law § 310(15).

### **SECTION 3. DOCUMENTATION.**

Each action taken in connection with each procurement must be supported by documentation justifying a fair and reasonable price. When an award is made to other than the lowest responsible offeror, the determination to make the award must be supported by documentation that justifies the award and sets forth the reasons why the award furthers the best interests of the Land Bank.

### **SECTION 4. INDIVIDUAL RESPONSIBLE FOR PURCHASING.**

The Executive Director of the Land Bank is responsible for purchasing goods and services on behalf of the Land Bank. The Executive Director may delegate all or any part of such responsibility to staff as he or she deems appropriate.

### **SECTION 5. PERSONAL SERVICE CONTRACTS.**

a) **Use of Outside Contractors.** The Land Bank may engage Outside Contractors to perform Personal Services only if the Executive Director has determined that it is appropriate to do so. In making such a determination, the following factors shall be considered:

- i. the amount of time likely to be required in performing the services;
- ii. the degree of special skill likely to be required in performing the services;
- iii. the availability of employees of the Land Bank possessing the skills needed to perform the services;
- iv. the likely expense of training employees of the Land Bank to perform the services, and the likely future benefits to the Land Bank of such training;
- v. the availability of Outside Contractors and the likely expense of using Outside Contractors;
- vi. the requirement that the services be rendered by an independent professional, as in the case of auditors' opinions or legal opinions;
- vii. the effect of use of Outside Contractors on other agreements and operations of the Land Bank;
- viii. the extent to which the Land Bank has successfully used Outside Contractors in the past for the services to be performed; and
- ix. the need to assure that the Land Bank conducts its operations in the most effective and efficient manner.

b) **Selection of Outside Contractors.** Selection of all outside contractors shall be made on an open competitive basis, except where:

- i. The total amount of the contract is not likely to exceed \$2500;
- ii. The Executive Director determines that (1) the need to obtain high quality services or services having unique or extraordinary features or time requirements substantially outweighs possible cost savings from selection on a competitive basis, or (2) the Land Bank has other cost control procedures to protect it from paying more for services than necessary; or
- iii. The Board otherwise determines that competition would be inappropriate.

c) **Request for Proposals.** Where selection is made on a competitive basis, the Executive Director shall request detailed proposals from at least three outside contractors known to have experience in the type of service to be performed. Where the total value of the contract is likely to exceed \$5,000, the proposals shall be in writing and submitted in response to a Request for Proposals (“RFP”) issued by the Land Bank. Proposals shall be evaluated on the basis of all relevant factors such as the Outside Contractor's experience, reputation, technical qualifications, financial condition, past performance, size, quality and availability of staff, identity of supervisory

personnel, possible conflicts of interest, proposed scope of work and proposed fee or commission including as defined in any solicitation from the Land Bank.

No single factor shall necessarily be controlling, and the Outside Contractor submitting the proposal which is most favorable on an overall basis shall be selected, except that the Executive Director may reject any or all proposals if he or she considers such action in the best interests of the Land Bank.

When the total value of a Procurement Contract is likely to exceed \$100,000, the RFP may be preceded by a Request for Qualifications (“RFQ”) from the Land Bank to ensure that only qualified Outside Contractors are invited to submit proposals. Outside Contractors will be determined qualified based on an evaluation of their experience, reputation, technical qualifications, financial condition, past performance, size, quality and availability of staff, identity of supervisory personnel, and any other relevant questions included in the RFQ.

d) **Board Approval.** The following contracts for Personal Services shall require approval of the Board in advance by resolution and annual review by the Board:

i. Any contract involving Personal Services to be rendered over more than one year; and

ii. Any contract for Personal Services that is likely to result in total payment to the Outside Contractor in excess of \$5,000 per year and is not in the ordinary course of the Land Bank's business of maintaining, managing and operating the properties of the Land Bank.

## **SECTION 6. GOODS AND OTHER SERVICES.**

a) **Method of Purchase.** Selection of contracts for goods and services other than Personal Services shall be made only on a competitive basis except as otherwise set forth herein. The following method of purchase will be used when required by this Policy in order to achieve the highest quality and lowest cost:

### **Estimated or Actual Value Method and Approvals Required**

**\$0 - \$2,500:** The Executive Director, in his or her discretion, may enter into a contract on behalf of the Land Bank without obtaining quotations or the approval of the Board.

**\$2,500 - \$5,000:** At least three quotations written, will be obtained whenever possible. The Land Bank shall solicit such informal quotations utilizing sources most likely to identify the highest quality and lowest price of the particular good or service including, but certainly not limited to, newspaper and magazine advertisements, internet searches, catalogs, chamber of commerce recommendations and the prior experience of the Land Bank. The Land Bank shall create and maintain a written or digital record of the informal quotations solicited and received for such purchases.

**More than \$5,000:** At least three written quotations in response to a written request for proposals shall be required. Any contract entered into by the Land Bank shall be approved by resolution of the Board.

b) **Number of Proposals or Quotations.** A good faith effort shall be made to obtain the required number of proposals or quotations. If the Land Bank is unable to obtain the required number of proposals or quotations, the Land Bank will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement of the good or service.

c) **Awarding Contracts.** The award of a contract for goods or services other than Personal Services shall be made to the lowest priced responsible offeror which meets the Land Bank's specifications. In assessing whether an offeror is responsible, the Land Bank should consider all relevant factors, such as the offeror's capacity and financial ability to complete the contract, past performance, experience, reliability, and integrity.

d) **Documentation.** Each action taken in connection with each method of procurement must be supported by documentation justifying a fair and reasonable price.

## **SECTION 7. CIRCUMSTANCES WHERE SOLICITATION OF ALTERNATIVE PROPOSALS OR QUOTATIONS ARE NOT IN THE BEST INTEREST OF THE CORPORATION.**

a) The Land Bank is not required to solicit alternative proposals or quotations if the Executive Director or Chair, in his or her sole discretion, determines that such solicitation is not in the best interests of the Land Bank. For any action taken in connection with each circumstance below the Executive Director shall to the extent possible provide advance notice to the Board. In the following circumstances, it may not be in the best interests of the Land Bank to solicit alternative proposals or quotations:

i. Emergency Purchases. In the case of emergency, goods or services may be purchased immediately without competitive procedures. An emergency is an unanticipated occurrence beyond the control of the Land Bank that (1) threatens the life, health, safety or welfare of any person; (2) threatens the continued use or function of any of the Land Bank's property; or (3) is likely to cause damage to the Land Bank's property if immediate action is not taken. This section does not preclude alternate proposals, if time permits.

ii. Sole Source. Where there is only one source available for the required goods or service, the contract may be awarded without competitive procedures.

iii. Purchase of Second-Hand Goods. Purchase of surplus or second-hand goods from any source may be purchased without competitive procedures.

iv. Goods or Services Under \$2500. The time and documentation required to purchase through this Policy may be more costly than the item itself and would therefore not be in the best interests of the Land Bank. In addition, it is not likely that such minimal contracts would be awarded based on favoritism.

v. Utilities, Subscriptions, and Affiliate Transactions. The purchase of utilities, subscriptions and inter-affiliate transactions are excepted from alternative proposal/quotation requirements;

vii. Certain Professional Services.

1. Professional services or services requiring special or technical skill, training or expertise. The individual, company or firm must be chosen based on accountability, reliability, responsibility, skill, conflict of interests, reputation, education and training, judgment, integrity, continuity of service and moral worth. Furthermore, certain professional services to be provided to the Land Bank, e.g., legal and accounting services, impact liability issues of the Land Bank and its members, including securities liability in circumstances where the Land Bank is issuing bonds. These qualifications and the concerns of the Land Bank regarding its liability and the liability of its members are not necessarily found or addressed in the individual, company or firm that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

2. In determining whether a service fits into this category, the Land Bank shall take into consideration the following guidelines: (a) whether the services are subject to state licensing or testing requirements; (b) whether substantial formal education or training and experience is a necessary prerequisite to the performance of the services. Professional or technical services shall include but not be limited to the following: services of an attorney (including bond counsel); technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing, editing, or art work; management of Land Bank owned property; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

ix. Insurance. Notwithstanding procurement of insurance brokerage services subject to this Policy, actual insurance policies procured are not subject to the requirements of this Policy. Notwithstanding the generality of the foregoing, insurance brokerage and policies for insurance coverage for the 2017 fiscal year are exempt from this Policy.

b) **Written Report to Board.** Any Procurement Contract made and entered into without solicitation of alternative proposals or quotations with an estimated or actual value in excess of \$2,500 must be documented with a written report setting forth the reasons for such decision and must be delivered to the Board within no later than 30 days.

### **SECTION 8. CONSTRUCTION CONTRACTS**

Notwithstanding anything to the contrary herein, pursuant to the Not-for-Profit Corporation Law § 1617, the Land Bank shall not award any construction, demolition, renovation or reconstruction contract greater than \$10,000 except to the lowest bidder who, in its opinion, is qualified to perform the work required and who is responsible and reliable. The Land Bank may, however, reject any or all bids or waive any informality in a bid if it believes that the public interest will be promoted thereby. The Land Bank may reject any bid if, in its judgment, the business and technical organization, plant, resources, financial, standing, integrity or experience of the bidder justifies such rejection in view of the work to be performed.

### **SECTION 9. POLICY REVIEW**

The Land Bank shall review this Policy annually, and any amendments must be approved by resolution of the Board.

### **SECTION 10. GENERAL REQUIREMENTS**

a) All Procurement Contracts in an actual or estimated amount of \$5,000 or more shall be in writing and shall be executed by an authorized employee or officer of the Land Bank as specified in the by-laws or in a resolution of the board.

b) Regardless of the value of the Procurement Contract, any Procurement Contract involving services to be rendered over a period exceeding one year must be approved by resolution of the Board and reviewed annually by the Board.

c) The form of every Procurement Contract shall be approved by the Land Bank's counsel prior to execution.

d) Procurement Contracts which require contractors including Outside Contractors to perform services on premises owned or controlled by the Land Bank shall require proof of Workers' Compensation and proof of liability insurance naming the Land Bank as additional insured and shall provide that the contractor indemnifies the Land Bank for the negligent or intentional acts and omissions of the contractor's employees. When appropriate and at the discretion of the Board, these contracts may further require the contractor to provide proof of environmental insurance.

e) Procurement Contracts shall not knowingly be split to circumvent the spirit and purposes of this Policy.

f) **Local Goods or Services.** Reasonable preference will be given to making purchases locally and regionally from New York State business enterprises as defined in PAL 2897.

## **SECTION 11. PROMOTION OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES**

It is the goal of the Land Bank to award a fair share of Procurement Contracts to Minority-Owned Business Enterprises and Women-Owned Business Enterprises. It is also the Land Bank's goal to award Procurement Contracts to those procurement contractors who have evidenced compliance with the laws of the State of New York prohibiting discrimination in employment. The Executive Director shall be responsible for the promotion of utilization of such enterprises. The following procedures shall be followed:

a) For all contracts for goods and services, bidders shall be encouraged to include with their bids or RFP responses separate proposals which would demonstrate how their selection will achieve the goals of this section 11.

b) The Empire State Development Corporation maintains a list of certified Minority-Owned Business Enterprises and Women-Owned Business Enterprises by name and area of expertise, and each individual responsible for soliciting bids and proposals for the Land Bank shall rely on the Empire State Development's list, consult the list and contact appropriate Minority and Women-Owned Businesses to encourage them to submit bids or RFP responses.

c) In selecting a bidder where a Minority-Owned Business Enterprise or Women-Owned Business Enterprise has been identified, due consideration shall be given to the goals of the Land Bank.

### **d) Required Contract Provisions.**

i. As Required Pursuant to Executive Law § 312, all MWBE Threshold Contracts, all documents soliciting bids or proposals for MWBE Threshold Contracts, and every subcontract between the contractor of a MWBE Threshold Contract and its subcontractors for the MWBE Threshold Contract shall contain or make reference to the following provisions:

1. The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For purposes of this section, affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading's, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. At the request of the contracting agency, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.

3. The contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the MWBE Threshold Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status

Except that:

The provisions of this section 11(d)(i) shall not be binding upon contractors or subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate or distinct from the MWBE Threshold Contract as expressed by its terms, and they shall not apply to any employment outside this state or application for employment outside this state or solicitations or advertisements therefor, or any existing programs of affirmative action regarding employment outside this state and the effect of contract provisions required by this section shall be so limited; and

The Land Bank shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity and whether the imposition of the requirements of this section duplicate or conflict with any such law and if duplication or conflict exists, the Land Bank shall waive the applicability of this section to the extent of such duplication or conflict.

ii. As Required Pursuant to Executive Law § 313, MWBE Threshold Contracts for construction, demolition, major repair or renovation of real property and improvements thereon shall include provisions:

1. Requiring contractors to make a good faith effort to solicit active participation by enterprises identified in the directory of certified businesses provided to the Land Bank by the division of minority and women's business development in the New York State Department of Economic Development; and

2. Requiring the parties to agree as a condition of entering into the contract, to be bound by the provisions of New York State Executive Law § 316; and

3. Requiring the contactor to include the provisions set forth in (a) and (b) of this subdivision in every subcontract in a manner that the provisions will be binding upon each subcontractor as to work in connection with the MWBE Threshold Contract.

Except that:

The provisions of this section 11(d)(ii) shall not be binding upon contractors or subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate or distinct from the MWBE Threshold Contract as expressed by its terms; and

The Land bank shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity and whether the imposition of the requirements of this section duplicate or conflict with any such law and if duplication or conflict exists, the Land Bank shall waive the applicability of this section to the extent of such duplication or conflict.

iii. As Required Pursuant to Executive Law § 316-A, the land bank shall include a provision in all MWBE Threshold Contracts providing that any contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements of this article 15-A of the Executive Law as set forth in the MWBE Threshold Contract shall be liable to the Land Bank for liquidated or other appropriate damages and shall provide for other appropriate remedies on account of such breach as determined by the Land Bank's Counsel. Should the Land Bank choose to proceed against a contractor for breach of contract as provided for in this section, the Land Bank shall be precluded from seeking enforcement pursuant to Executive Law § 316.

e) **Copies to be provided.** Pursuant to § 315(2) of the Executive Law, the Land Bank shall provide to all prospective bidders for a MWBE Threshold Contract, a current copy of the directory of certified businesses, and a copy of the regulations required pursuant to §§ 312 and 313 of the Executive Law at the time bids or proposals are solicited.

f) **Waivers.** In compliance with Executive Law § 313(6), where it appears that a contractor cannot, after a good faith effort, comply with the minority and women-owned business enterprise participation requirements set forth in a particular MWBE Threshold Contract, a contractor may file a written application with the Land Bank requesting a partial or total waiver of such requirements setting forth the reasons for such contractor's inability to meet any or all of the participation requirements together with an explanation of the efforts undertaken by the contractor to obtain the required minority and women owned business enterprise participation. In implementing the provisions of this section, the contracting agency shall consider the number and types of minority and women-owned business enterprises located in the region in which the MWBE Threshold Contract is to be performed, the total dollar value of the MWBE Threshold Contract, the scope of work to be performed and the project size and term. If, based on such considerations, the contracting agency determines there is not a reasonable availability of

contractors on the list of certified businesses to furnish services for the project, it shall issue a waiver of compliance to the contractor. In making such determination, the Land Bank shall first consider the availability of other business enterprises located in the region and shall thereafter consider the financial ability of Minority and Women-Owned Businesses located outside the region in which the contract is to be performed to perform the MWBE Threshold Contract.

g) **Monitoring.** The Land Bank shall comply with the monitoring requirements set forth Executive Law § 315(1).

h) **Reports.** The Land Bank shall comply with the reporting requirements set forth Executive Law § 315(3).

i) **Goals.** In all MWBE Threshold Contract Procurements the Land Bank shall set MWBE goals for contracts made directly or indirectly to minority and women-owned business enterprises, in accordance with the findings of the 2010 disparity study, to attempt to achieve the results with regard to total annual Procurement in regards to MWBE Threshold Contracts as set forth in Executive Law § 313(1).

## **SECTION 12. UTILIZATION OF STATE AND NASSAU COUNTY PROCUREMENT**

Notwithstanding any other provision herein, the Land Bank shall be authorized to:

- a) award contracts for the purchase of goods or services from the New York State approved vendor list, for the particular goods referenced therein, on the same terms and in the same manner as a municipality is authorized to utilize such list;
- b) award contracts, without soliciting bids or proposals, to any vendor with a current Nassau County contract on substantially the same terms and conditions as those set forth in the County contract or upon more favorable terms and conditions; and
- c) use responses to any Nassau County issued request for bids or proposals as a predicate to entering into a contract, without independently soliciting bids for the same good or service, and may negotiate and enter such a contract without regard to determinations made or contracts entered by Nassau County in relation to such solicitation.
- d) utilize the services of Nassau County personnel, procurement processes or financial, accounting systems whenever possible to assist the Land Bank in carrying out its mission.

## **SECTION 13. MISCELLANEOUS PROVISIONS**

a) **Powers of Amendment.** Any modification or amendment of this Policy may be made by a supplemental resolution adopted at any duly constituted meeting of the Board; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Land Bank contracts, the terms of which were established pursuant to this Policy or to a previously existing policy.

b) **No Recourse Under This Policy.** No provision of this Policy shall be the basis for any claim based on this Policy against any member, officer or employee of the Land Bank or the Land Bank itself.

c) **Provisions Required By Law.** This Policy is hereby deemed to include any provision required by law to be included herein.

d) **Failure to Comply.** The unintentional failure to comply with the provisions of this Policy shall not be a grounds to automatically void action taken or give rise to any cause of action against the Land Bank or any member, officer or employee thereof.