

TOWN OF BABYLON PROCUREMENT POLICY



RICH SCHAFFER, SUPERVISOR

TOWN BOARD

DuWayne Gregory

Anthony Manetta

Antonio Martinez

Terence McSweeney

Joseph Ferrandino, Commissioner of General Services

Kathy Lynch, Director of Purchasing

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TOWN OF BABYLON PROCUREMENT POLICY

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I. GENERAL PROVISIONS

A. PURPOSE

The purpose of this Statement of Procurement Policy is to: provide for the fair and equitable treatment by the Town of Babylon of all persons or firms involved in providing materials, supplies, equipment, services and/or labor to the Town of Babylon; assure that materials, supplies, services, equipment, and construction are procured efficiently, effectively, and at the most fair and equitable prices available to the Town of Babylon; promote bid competition; provide safeguards for maintaining a procurement system of quality and integrity and assure that Town of Babylon procurement actions are in full compliance with applicable Federal standards, HUD regulations, and New York State and Town laws and regulations.

B. APPLICATION

This Procurement Policy Statement applies to all contracts for the procurement of supplies, equipment, materials, services, public works, and professional services contracts entered into by the Town of Babylon including all related boards, garbage districts, etc., after the effective date of this Statement. This policy shall apply to all expenditures of funds by the Town of Babylon for public purchasing, irrespective of the source of funds, including contracts which do not involve an obligation of funds (such as concession contracts); however, nothing in this Statement shall prevent the Town of Babylon from complying with the terms and conditions of other regulations otherwise consistent with all applicable laws. The term “procurement”, as used in this statement, includes materials, supplies, and equipment, services contracts, public works contracts and modifications to contracts. This policy will be reviewed annually and may be revised from time to time.

C. PUBLIC ACCESS TO PROCUREMENT INFORMATION

Procurement information shall be a matter of public record to the extent provided in New York State Freedom of Information Act and shall be available to the public as provided in that statute. An exception to this rule is confidential financial information or information deemed proprietary by the submitting individual or company.

II. PROCUREMENT AUTHORITY AND ADMINISTRATION

- A.** All procurement transactions shall be administered by the Commissioner of General Services (hereinafter the Commissioner/Director of Purchasing. The Commissioner/Director of Purchasing shall also establish a system of sanctions for violations of the ethical standards described in Section X below, consistent with State law.
- B.** For all contract procurement actions in which the Town of Babylon is a recipient or subrecipient of a Federal award, compliance with 2 CFR 200.317-326 is mandatory.
- C.** The Commissioner/Director of Purchasing or his/her designee shall ensure that:
 - 1. Procurement requirements are subject to an annual planning and review process to assure efficient and economical purchasing;
 - 2. Contracts and modifications are in writing, clearly specifying the desired supplies,

materials, equipment, labor, or professional services, and are supported by sufficient documentation, including, whenever practical, estimated quantities, estimated costs for public works projects, requested modifications/changes to existing specifications;

3. (for procurements other than small purchases) public notice in at least one, but as a rule, two publications of general circulation is given of each upcoming procurement at least five business days before a solicitation is due. In instances where community development funds are involved, additional days will be allowed making a total of 21 calendar days; and notice of contract awards is made available to the public; Funding shall be in place for said purchase or public works project;
 4. Solicitation procedures/standards are conducted in full compliance with State and Federal standards, the latter only when required by Federal law;
 5. For procurements of small purchases, architect/engineer Services, or other professional services that the minimum required numbers of quotations are solicited pursuant to this policy and State law.
 6. A cost or price analysis is conducted of the responses received for all procurements;
 7. contract award is made to a responsive and responsible bidder offering the lowest price (for sealed bid contracts) or contract award is made to the offeror whose proposal offers the greatest value to the Town of Babylon, considering price, & technical expertise, and other solicitation (for contracts awarded based on competitive proposals); awards are made to the lowest overall bidder and awards can be awarded by item, group of items or categories, whichever is in the best interest of the Town; Vendors or contractors must hold their prices for a 45 day period; unsuccessful firms are notified within 45 days or as soon as award or rejection of a bid or bids has been processed;
 8. there are sufficient unencumbered funds available to cover the anticipated cost of each procurement before contract award or modification (including change orders), work is inspected and accepted before payment is authorized, and payment is made promptly for contract work performed and accepted; and
 9. If said contract is approved, the Town of Babylon shall comply with all applicable HUD review requirements (if applicable).
- D.** The Commissioner of General Services shall create a statement acknowledging that the requirements as outlined in Section II B of this policy are adhered to. This statement and the accompanying resolutions and any later changes shall be submitted to the Professional Services Committee and the Town of Babylon Town Board for approval. The Board appoints and delegates procurement authority to the Commissioner of General Services who is responsible for ensuring that any procurement policies adopted are appropriate and enforced for the Town of Babylon.

The Commissioner of General Services is responsible for the day to day operation of the Department of General Services. As the Commissioner of General Services, he/she has the authority to sign purchase orders, process bid documents after approval by Town Board resolution, and can extend, pursuant to N.Y. State General Municipal Law, duly awarded non-federally funded bids if to be found in the best interest of the town. For federally funded bids, bid extensions must be based on need, issues of possible delinquency on the part of the contractor, associated costs of the proposed extension

and any contribution on the part of the town to the delay.

III. PROCUREMENT METHODS

A. SELECTION METHOD

If it has been decided that the Town of Babylon will directly purchase the required items, one of the following procurement methods shall be chosen, based on the nature and anticipated dollar value of the total requirement. All dollar amounts referred to below is the amount of the purchase of the same commodity, service or technology within a 12 month period commencing on the date of purchase.

B. SMALL PURCHASE PROCEDURES

1. **General.** Any contract not exceeding \$20,000 for materials and supplies and \$30,000 for public works projects, may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section (except as may be reasonably necessary to comply with Section IX of this Statement). *The \$20,000 and \$30,000 limits refer to total amounts spent or intended to be spent in a 12 month period on the purchase of similar products or services.*
2. **Small purchases of \$10,000 or less.** For small purchases below \$5,000, only one quotation need be solicited if the price received is considered reasonable. For purchases over \$5,000 but less than \$10,000, two or more quotations will be solicited. Such purchases should be distributed among-qualified sources. If practical, a quotation shall be solicited from other than the previous source before placing a repeat order.
3. **Small purchases over \$10,000 but not exceeding \$20,000.** For small purchases in excess of \$10,000 but not exceeding \$20,000 no less than three offerors shall be solicited to submit price quotations, which must be obtained, in writing, by fax or electronic mail, as allowed by State law. Award shall be made to the responsible offeror providing the lowest acceptable quotation, unless otherwise justified in writing or other specified circumstances. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record. **Quotations from one vendor or supplier shall not be disclosed to another vendor or supplier. These quotations must be attached to the requisition when submitted to the Dept. of General Services for review and approval.**
4. **Public works contracts of \$20,000 or less.** For public works contracts below \$10,000, only one quotation need be solicited if the price received is considered reasonable. For small public works contracts over \$10,000 but less than \$20,000, more than one quotation shall be solicited. Such contracts should be distributed among qualified sources. If practical, a quotation shall be solicited from other than the previous source before placing a repeat order. **Quotations from one vendor shall not be disclosed to another vendor or supplier. These quotations must be attached to the requisition when submitted to the Dept. of General Services for review and approval.**
5. **Public works contracts over \$20,000 but not exceeding \$30,000.** For public works contracts in excess of \$20,000 but not exceeding \$30,000, no less than three written quotations or quotations submitted via telefax or electronic mail to the Department of

General Services will be solicited, as allowed by State law. Award shall be made to the offeror providing the lowest acceptable quotation, unless otherwise justified in writing or other specified factors. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record. **Quotations from one vendor shall not be disclosed to another vendor or supplier. These quotations must be attached to the requisition when submitted to the Dept. of General Services for review and approval.**

Contractors must be qualified and be able to meet liability insurance requirements and any other reasonable requirements as set forth by the Town of Babylon.

6. **Procedure of obtaining quotes.** The procedure for obtaining written or fax quotes will be as follows. The Department of General Services will prepare a standardized quotation form and mail or fax said form to the appropriate number of vendors. The requesting department will solicit proposals for the purchase of materials/supplies or a public works contract. Vendors will return completed quotation forms to the Department of General Services. The Commissioner will select the lowest responsible vendor and notify the department. The requesting department will then complete a requisition and submit it to the Department of General Services for processing.

C. SEALED BIDS

1. **Conditions for Use** Contracts shall be awarded based on competitive sealed bidding if the following conditions are present: a complete, adequate, and realistic specification or purchase description is available; two or more responsible bidders are willing and able to compete effectively for the work; the procurement lends itself to a firm fixed price contract; the solicitation is publicly advertised consistent with Part B; and the selection of the successful bidder can be made principally on the basis of price. Sealed bidding shall be used for all construction contracts exceeding \$30,000 (\$2,000 if project is federally funded) and for all purchases whose annual aggregate amount exceeds, or expects to exceed, \$30,000 in a calendar year. For professional services contracts, sealed bidding should not be used. The Town may elect to use the Request for Proposal or Request for Qualifications process if deemed appropriate in a particular situation. **Request for Qualifications shall be used for determining qualified engineering firms, planning firms, architects, attorneys and for services associated with Information Technologies or any other services deemed necessary. All responses to a Request for Qualifications shall be kept on file in the Department of General Services for a minimum of three (3) years. After three (3) years, the Commissioner of General Services will review and procure additional Requests for Qualifications as necessary.**
2. **Solicitation and Receipt of Bids** An invitation for bids shall be issued including specifications and all contractual terms and conditions applicable to the procurement; including a statement that award will be made to the lowest responsible and responsive bidder whose bid meets the requirements of the invitation for bids. The invitation for bids shall state the time and place for both the receipt of bids and the public bid opening. All bids received shall be time-stamped but not opened and shall be stored in a secure place until bid opening. A bidder may withdraw its bid at any time prior to bid opening. Bids submitted via telefax or electronic mail will not be accepted.
3. **Bid Opening and Award Bids** shall be opened publicly and in the presence of at least one witness. Bid openings are open to the public. Bids submitted after advertised time will not be opened or considered. An abstract of bids shall be recorded and the bids shall be available for public inspection. Award shall be made as provided in the

invitation for bids by written notice to the successful bidder. If equal low bids are received from responsible bidders (non-federally funded projects or purchases), award shall be made to the vendor providing the highest discount. If no discounts are offered (non-federally funded purchases or projects), or if two or more bidders remain equal (federally funded purchases or projects), or if discounts offered are equal, lots will be drawn to determine the award. For federally funded purchases and contracts, awards shall be made giving priority to firms defined in Part VIII. If only one responsive bid is received from a responsible bidder, award shall not be made unless a cost or price analysis verifies the reasonableness of the price. All unsuccessful bidders will be notified of award, once finalized. The Commissioner/Director of Purchasing shall recommend bid award to the Town Board. Formal awards of all bids shall be approved by resolution by the Town Board at a public meeting. Once awarded, the Commissioner/Director of Purchasing has the authority to process all bid documents except public works contracts over \$20,000. Contracts in excess of \$20,000 will be executed by the Supervisor after approval by the Town Board.

The Commissioner of General Services has the authority to extend bids for up to four, one-year periods if found to be in the best interest of the Town of Babylon.

4. Mistake in Bids

- a. Bid Mistake; Public Work projects. (a) In all contracts where a unilateral error or mistake is discovered in a bid, such bid may be withdrawn after a showing of the following: (1) the mistake is known or made known to the Town of Babylon prior to the awarding of the contract or within three days after the opening of the bid, whichever period is shorter; and (2) the price bid was based on an error of such magnitude that enforcement would be unconscionable; and (3) the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and (4) the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and (5) it is possible to place the Town of Babylon in status quo ante.

Request for withdrawal of a bid must be submitted in writing to the Commissioner/Director of Purchasing. A written explanation and justification must be provided. Approval or withdrawal of bid shall be considered and corrections of non-clerical mistakes shall be considered.

- b. In the absence of legal counsel and receipt of a written determination from same, unless otherwise required by law, the sole remedy for a bid mistake in accordance with this policy shall be withdrawal of that bid and the return of the bid bond or other security, if any, to the bidder. Thereafter, the Town of Babylon may, in its discretion, award the contract to the next lowest bidder or rebid the contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited.
- c. Any decisions to allow the withdrawal of a bid must be supported by a written determination signed by the Commissioner/Director of Purchasing. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Town of Babylon or fair competition shall be permitted.

- d. The Commissioner/Director of Purchasing may waive any and all formalities except those deemed necessary or contradictory to this policy or required by law, and an integral part of the bid process.
5. **Bonds:** In addition to the other requirements of this Statement, the following requirements may apply:
- a. For all publicly bid construction contracts, and other construction contracts, as determined by the Commissioner, other than those specified in 5b and 5c below, contractors shall be required to submit the following at the appropriate time during the contract process, unless otherwise required by State or local laws or regulations;
 - i. A bid bond or certified check from each bidder equivalent to 5% of the bid price; and
 - ii. A performance bond or certified check for 100% of the contract price; and
 - iii. A labor and materials payment bond for 100% of the contract price; and
 - iv. Appropriate insurances as outlined in the bid documents; and
 - v. Original certified payrolls for employees of contractors and subcontractors; and
 - vi. Employee daily sign-in sheets are required on all public works projects; and
 - vii. Copies of cancelled payroll checks for contractors and subcontractors; and
 - viii. A maintenance bond for 100% of contract upon acceptance of all work; and
 - ix. Any other requirements as detailed by the Commissioner/Director of Purchasing; and
 - b. In the case of construction of conventional development projects funded pursuant to the U.S. Housing Act of 1937, the contractor shall be required to submit the following, unless otherwise required by State or local laws or regulations:
 - i. A bid bond or certified check from each bidder equivalent to 5% of the bid price; and
 - ii. A performance bond or certified check for 100% of the contract price; and
 - iii. A labor and materials payment bond for 100% of the contract price; and
 - iv. A maintenance bond for 100% of contract upon acceptance of all work; and
 - v. Appropriate insurances as outlined in the bid documents; and
 - vi. Original certified payrolls for employees of contractors and subcontractors; and
 - vii. Cancelled payroll checks for contractors and subcontractors; and
 - viii. A maintenance bond for 100% of contract upon acceptance of all work; and
 - ix. Any other requirements as detailed by the Commissioner of General Services and the Director of Community Development.
 - c. In the case of construction under the Comprehensive Improvement and Assistance Program (CIAP) funded pursuant to the U.S. Housing Act of 1937, for any contract over \$10,000, the contractor shall be required to submit the following,
 - i. A bid guarantee from each bidder equivalent to 5% of the bid price; and
 - ii. A performance and payment bond for 100% of the contract price; and

- iii. A maintenance bond for 100% of contract upon acceptance of all work; and
- iv. Appropriate insurances as outlined in the bid documents and New York Dept. of Labor; and
- v. Original certified payrolls for employees of all contractors and subcontractors; and
- vi. Any other requirements as detailed by the Commissioner/Director of Purchasing. PREVAILING WAGES

All contractors who are involved with any public works project, which can be described as any project that involves labor, must comply with the prevailing wage requirements. This requirement applies to all contracts regardless of whether they have been publicly bid or not. Simply said if they are on Town property and performing a task that involves labor, they are required to pay prevailing wages to the employees on site. This does not apply to companies simply delivering products, supplies or equipment to the Town. The only exception to this requirement is an employer or owner who performs the work themselves or who employees an immediate family member.

Prevailing wages are an hourly pay rate that has been determined by the New York State Dept. of Labor. These rates vary from trade or title. The wage schedules shall be provided by the Dept. of General Services, prior to the commencement of any work. These wage schedules are updated from time to time by the New York State Dept. of Labor. If the project is federally funded, then the all contractors and subcontractors must comply with all federal rules and requirements, including but not limited to, the Davis-Bacon Act.

This provision will not apply to companies' delivering goods and/or equipment to the Town, but will apply to a company hired to supply and install a product or equipment.

Certified payrolls must be submitted with any and all requests for payment, bill or voucher, and comply with all the rules and regulations of the New York State Dept. of Labor.

Certified payrolls must state the name of the employee, title, hourly rate, number of hours worked during the specific payroll or during the course of the task performed for the Town pay period, all in accordance with New York State Dept. of Labor. Certified payrolls are available online or from the Dept. of General Services.

Companies should be notified prior to the commencement of any work or prior to obtaining any quotes that prevailing wages must be paid and that certified payrolls will be required prior to the issuance of any payment for services rendered. All firms should be advised that the New York State Dept. of Labor is responsible for monitoring the prevailing wage statute and may either audit a project while in progress or after completion. The New York State Dept. of Labor has the authority to debar or suspended any contractor from performing any work for any municipality in the State of New York.

CHANGE ORDERS

Once a contract is awarded or a purchase order is issued for any public works project, any deviation (whether an increase or decrease in cost) from the tasks agreed to, or the scope of the project, or the cost thereof, must be approved by a change order. The change order must be filed by the contractor or consultant (in case of professional services agreement). It must include reference to the original scope of work and associated cost and an explanation of changes to the scope of work. This must be accompanied by an estimate of the increase or decrease in the materials used and/or labor involved. Specific quantities must be included in the change order. No change in the scope of the work originally approved shall be granted until a change order has been approved by the granting authority, which may be the Town Board

or the Commissioner, depending on the type of contract. In the event of a change order for a public works contract that is being overseen by a third-party consultant, written authorization/approval by the consultant must accompany the proposed change order. These documents are reviewed and examined by the Change Order Review

committee consisting of representatives from the departments of the Supervisor, Comptroller, General Services, Planning, Town Attorney and the Department who is directly involved in the project will evaluate all change orders and provide its recommendations to the Town Board.

Department heads should not authorize payment for goods or services that have not been received. Town employees are prohibited from ordering or purchasing any goods or services that are intended for personal use and have no value or relevance to the Town.

APPRENTICESHIP PROGRAM REQUIREMENTS:

The Town of Babylon hereby requires in any competitive sealed bid for any public works contract that exceeds \$250,000.00 that each prime contractor(s) and all of prime contractor(s) sub-contractor(s), prior to awarding a construction contract, to be a participant in good standing of a qualified apprenticeship program that is registered with and approved by the New York State Department of Labor and to have apprenticeship agreements, as evidenced by valid Certificates of Completion which are specifically identified as pertaining to the trade(s) and/or job titles(s) called for within the construction contract appropriate for the type and scope of work to be performed, which have been registered with, and approved by, the New York State Commissioner of Labor in accordance with Article 23 of the New York Labor Law, anything in § 103 of the New York General Municipal Law to the contrary notwithstanding. A "Certificate of Completion" shall mean a certificate issued by the New York State Department of Labor which recognizes a person's successful completion, within the 12 month period immediately preceding the date of the construction contract, of a qualified apprenticeship and the training program registered approved by Commissioner of the New York State Department of Labor in accordance with the New York Labor Law and 12 NYCRR §600. et seq., and any amendments thereto. The Department of General Services may waive the Apprenticeship requirement for Public Works projects exceeding \$250,000.00 in cost if the project involves a specialty trade and it has been determined that including the Apprenticeship requirement will not allow a sufficient number of companies to respond to the contract solicitation, will not foster a competitive environment amongst potential bidders and will not be in the best financial interests of the Town of Babylon.

Prior to the award of a construction agreement with the Town of Babylon for any public works contract that exceeds \$250,000.00, each of the prime contractor(s), subcontractor(s), or applicant(s) (as the case may be, and hereinafter the "Contractor") shall provide (i) a list of all trades or classifications of workers it anticipates engaging on the construction project given the type and scope of work to be performed and (ii) documentation to show that it has apprenticeship agreements appropriate for said type and scope of work to be performed which have been registered with, and approved by, the New York State Commissioner of Labor in accordance with Article 23 of the New York Labor Law, and at least one (1) Certificate of Completion from each apprenticeship training program with which it has an apprenticeship agreement. The Contractor must also submit then current New York State Department of Labor approved Form AT-401 certificates or similar certificates demonstrating that there is at least one (1) apprentice currently enrolled in each apprenticeship training program for the type and scope of work to be performed on the construction contract, and if the Contractor is to be a signatory to a sponsored apprenticeship training program, it must submit to the Town a letter from the sponsor of the apprenticeship training program(s), verifying of the Contractor's signatory status as a participating entity approved by the Commissioner of the New York State

Department of Labor to employ New York

State registered apprentices. If a contractor is a signatory to a sponsor, the contractor must submit to the Town a letter from the sponsor verifying its signatory status.

It shall be a contractor's responsibility to submit the required Certificates of Completion as part of any bid submitted in connection with a construction contract and to provide to the Department of General Services the identity of apprentices who have graduated from their apprenticeship program.

In recognition of the Governor's Office of Storm Recovery and the Town of Babylon being committed to meet a 30% M/WBE goal of this project, the Town of Babylon will waive the requirement of approved apprentice program for New York State Certified M/WBE sub contractors only, in order to assist Prime Contractors to achieve this goal and facilitate compliance.

D. COMPETITIVE PROPOSALS

1. **Conditions for Use.** Competitive proposals (including turnkey proposals for development) may be used if there is an adequate method of evaluating technical proposals and where the Town of Babylon determines that conditions are not appropriate for the use of sealed bids. An adequate number of qualified sources shall be solicited after advertisement.
2. **Solicitation.** The Request for Proposals (RFP) shall clearly identify the relative importance of price and other evaluation factors and sub-factors, including the weight given to each technical factor and sub factor. A mechanism for fairly and thoroughly evaluating the technical and price proposals shall be established before the solicitation is issued. Proposals shall be handled so as to prevent disclosure of the number of offerors, identity of the offerors, and the contents of their proposals. The proposals shall be evaluated only on the criteria stated in the request for proposals. Where appropriate, prices should be evaluated separately from other criteria.
3. **Negotiations.** Unless there is no need for negotiations with any of the offerors, negotiations shall be conducted with offerors who submit proposals determined to have a reasonable chance of being selected for award, based on evaluation against the technical factors and price consideration as specified in the RFP. Such offerors shall be accorded fair and equal treatment with respect to any opportunity for negotiation and revision of proposals. The purpose of negotiations shall be to seek clarification with regard to and advise offerors of the deficiencies in both the technical and price aspects of their proposals so as to assure full understanding of and conformance to the solicitation requirements. No offeror shall be provided information about any other offeror's proposal, and no offeror shall be assisted in bringing its proposal up to the level of any other proposal. Offerors shall not be directed to reduce their proposed prices to a specific amount in order to be considered for award. A common deadline shall be established for receipt of proposals, revisions and the best and final offers.
4. **Award.** After evaluation of proposals and best and final offers, if any, the contract

shall be awarded to the responsible firm whose qualifications, price and other factors considered, are the most advantageous to the Town of Babylon. Once a proposer has been chosen, final negotiations may be initiated by the town. All negotiations for either award or contract modification shall be supported by a memorandum of negotiation, listing the basis for each cost element and profit.

Architect/Engineer/Planning/Consultant Services for Federally Funded Projects.

Architect/engineer/planning/consultant services for federally funded projects in the excess of the small purchase limitation may be obtained by either the competitive proposals method or qualifications-based selection procedures. Sealed bidding, however, shall not be used to obtain architect/engineer/consultant services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications-based selection procedures shall not be used to purchase other types of services except those outlined herein and in the enabling legislative resolution.

The Department of General Services will maintain a file on the qualifications of engineering and other consulting firms. Information submitted shall include background, a detailed prior projects history, and qualifications of principals and significant individuals in the firm, proposed hourly rates, and multiplier to be charged if any.

E. NON-COMPETITIVE PROPOSALS

1. **Conditions for use.** Procurements shall be conducted competitively to the maximum extent possible. Procurement by non-competitive proposals may be used only when the award of a contract is not feasible using small purchase procedures, sealed bids, or competitive proposals, and one of the following applies;
 - a. The item is available only from a single source, based on a good faith review of available sources;
 - b. An emergency exists that seriously threatens the public health, welfare or safety, or endangers property, or would otherwise cause serious injury to the Town of Babylon, as may arise by reason of a flood, earthquake, epidemic, riot, equipment failure, or similar event. In such cases, there must be an immediate and serious need for materials, supplies, services, or construction that the need cannot be met through any other procurement methods, and the emergency procurement shall be limited to those materials, supplies, services, or construction necessary to meet the emergency. This emergency must be declared by duly adopted resolution by the Town of Babylon Town Board in open session and with detailed justification, however, should the emergency require immediate action, the Commissioner may let the appropriate contract and shall state to the Town Board in writing, the emergency and the justification for letting the contract without Town Board approval.
 - c. HUD authorizes the use of non-competitive proposals; or
 - d. After solicitation of a number of sources, competition is determined inadequate or nonexistent.
 - e. Obvious factors, other than price only, must be considered.
 - f. The Town Board, in accordance with N.Y. State law, has adopted a resolution standardizing on a particular manufacturer and a resulting sole supplier situation exists.

2. **Justification.** Each procurement based on non- competitive proposals shall be supported by a written justification for using such procedures. The justification shall be approved in writing by the Commissioner/Director of Purchasing.
3. **Price reasonableness.** The reasonableness of the price for all procurements based on non-competitive proposals shall be determined by performing a cost analysis, as described in Section F, Paragraph 3, below.

F. PROFESSIONAL SERVICES

1. **General.** “Professional services” are occupations in the tertiary sector of the economy requiring special training in the arts or sciences. Some professional services require holding professional licenses such as architects, auditors, engineers, planning, doctors and lawyers. Other professional services involve providing specialist business support to businesses of all sizes and in all sectors; this can include tax advice, supporting a company with accounting, IT services or providing management advice.
2. **Procedure of obtaining quotes for Professional Services.** The procedure for obtaining written or electronic quotes will be as follows. The requesting department will forward specifications of the professional service to the Department of General Services. The requesting department may include a list of possible vendors. Any qualified and responsible firm may apply to be placed on the Town’s bid list, through the Town’s bid website. The Department of General Services will prepare a quotation request and e mail said form to the appropriate number of vendors. Vendors will return completed quotation to the Department of General Services either in person, regular mail or electronically. The quotes will be distributed to the requesting department and the Professional Evaluation Committee for review and make a recommendation of award to the Town Board. Once approved by the Town Board, the office of the Town Attorney will prepare a contract.
3. **Professional Consultant Evaluation Committee.** A Professional Consultant Evaluation Committee consisting of the Commissioner of General Services, Commissioner of Planning & Development, Commissioner of Dept. of Public Works, Chief of Staff, Deputy Chief of Staff, Deputy Supervisor, Comptroller and Town Attorney will meet to review the proposals of all firms and choose the firm found to be the most qualified for a particular project. The committee shall meet on approximately every two (2) weeks to review professional services proposals. Whenever a formal committee meeting is impractical as the result of an emergency, the committee may convene electronically to evaluate and provide recommendations to the Board, provided that the Department of General Services has reviewed the proposal and affirms that the content of the professional services proposal complies with this policy. For purposes of this subsection only, “Emergency” shall be defined as a declaration of emergency by the federal, state, county, or town government, an act of God, perils of the sea or air, landslide, earthquake, fire, explosion, flood; acts of a public enemy, war, blockade, insurrection, riot or civil disturbance, or similar occurrence; but not including reasonably anticipated weather conditions for the geographic area of the Town. The committee will then negotiate an appropriate fee for the project with the firm selected.
4. **Professional services of \$25,000 or less.** For professional services below \$25,000, only one quotation need be solicited if the price received is considered reasonable. Such

services should be distributed among-qualified sources. If practical, a quotation shall be solicited from other than the previous source before arranging the services.

5. **Professional Services over \$25,000 but less than \$100,000.** For professional services in excess of \$25,000 but not exceeding \$100,000 no less than three offerors shall be solicited to submit price quotations, which must be obtained, in writing or electronic mail, as allowed by State law. Award shall be made to the responsible offeror providing the lowest acceptable quotation, unless otherwise justified in writing or other specified circumstances, such as for architect-engineer, or other professional consultant service contracts. If non-price factors are used, they shall be disclosed to all those solicited. The names, addresses, and/or telephone numbers of the offerors and persons contacted, and the date and amount of each quotation shall be recorded and maintained as a public record. **Quotations from one vendor or supplier shall not be disclosed to another vendor or supplier. These quotations must be attached to the requisition when submitted to the Dept. of General Services for review and approval.**
6. **Professional Services exceeding \$100,000.** For professional services in excess of \$100,000 may be obtained by either the competitive proposals method or qualifications-based selection procedures. Sealed bidding, however, shall not be used to obtain architect/engineer/consultant services. Under qualifications-based selection procedures, competitors' qualifications are evaluated and the most qualified competitor is selected, subject to the negotiation of fair and reasonable compensation. Price is not used as a selection factor under this method. Qualifications-based selection procedures shall not be used to purchase other types of services except those outlined herein and in the enabling legislative resolution. A Professional Consultant Evaluation Committee will review the competitive proposals or qualifications-based selections.

G. COST AND PRICE ANALYSIS

1. **General.** In general, a cost or price analysis shall be performed for all procurement actions, including contract modifications. The method of analysis shall be determined by Commissioner/Director of Purchasing. The degree of analysis shall depend on the facts surrounding each procurement and the need for said analysis.
2. **Submission of Cost or Pricing Information.** If the procurement is based on noncompetitive proposals, or when only one offer is received, or for other procurements as deemed necessary by the Town of Babylon, the offeror shall be required to submit:
 - a. A cost breakdown showing projected costs and profit;
 - b. Commercial pricing and sales information, sufficient to enable the Town of Babylon to verify the reasonableness of the proposed price as a catalog or market price of a commercial product sold in substantial quantities to the general public; or
 - c. Documentation showing that the offered price is set by law or regulation.

The Commissioner/Director of Purchasing may elect to re-bid a contract or bid if, in his/her determination, insufficient proposals are received or if the specifications are found to be insufficient or ambiguous.

3. **Cost Analysis:** Cost analysis shall be performed if an offeror/contractor is required to submit a cost breakdown as part of its proposal. When a cost breakdown is submitted: a cost analysis shall be performed of the individual cost elements; the Town of Babylon shall have a right to audit the contractor's financial records and any other records pertinent to such costs; and profit shall be analyzed separately. Costs shall be allowable only to the extent that they are consistent with applicable Federal cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation, 48 CFR Chapter 1, if federal funds are involved). In establishing profit, the Town of Babylon shall consider factors such as the complexity and risk of the work involved the contractor's investment and productivity, the amount of sub-contracting, the quality of past performance, and industry profit rates in the area for similar work.
4. **Price Analysis** a comparison of prices shall be used in all cases other than those described in Section F, Paragraph 3 above, to the extent practical.
5. **Extension of Contract Periods** Where appropriate, non-federally funded purchases or contracts only, may be extended for two or four additional one-year periods at the sole discretion of the Commissioner/Director of Purchasing and with consent of the vendor or contractor, providing that provisions for the extension were a part of the original solicitation.

H. CANCELLATION OF SOLICITATIONS

1. The Town of Babylon reserves the right to reject any and/or all bids.
2. An invitation for bids, request for proposals, or other solicitation may be canceled before bids are due if; (a) the Town of Babylon no longer requires the supplies, services or construction; (b) the Town of Babylon can no longer reasonably expect to fund the procurement; (c) proposed amendments to the solicitation would be of such magnitude that a new solicitation would be desirable; or (d) any other similar reasons when it is in the best interest of the Town.
3. A solicitation may be canceled and all bids or proposals that have already been received may be rejected if: (a) the supplies, services, or construction are no longer required; (b) ambiguous, erroneous or otherwise inadequate specifications were part of the solicitation; (c) the solicitation did not provide for consideration of all factors of significance to the Town of Babylon; (d) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds; (e) there is reason to believe that bids or proposals may not have been independently arrived at in open competition, may have been collusion, or may have been submitted in bad faith; (f) for good cause of a similar nature when it is in the best interest of the Town of Babylon; or (g) if specifications are insufficient, deficient, or incorrect.
4. The reasons for cancellation shall be documented in the procurement file and the reasons for cancellation and/or rejection shall be provided upon request to any offeror solicited.
5. A notice of cancellation shall be sent to all offerors solicited and, if appropriate, shall explain, if applicable, that they will be given an opportunity to compete on any re-solicitation or future procurement of similar items. If bids have already been received but unopened, they may be returned to the offeror.

6. If all otherwise acceptable bids received in response to an invitation for bids are at unreasonable prices, or only one bid is received and the price is unreasonable, the Town of Babylon shall cancel the solicitation and either:
 - a. re-advertise for bids, if time permits; or
 - b. re-solicit using a request for proposal; or
 - c. complete the procurement by using the competitive proposals method, following Section D, Paragraph 3 and 4 above (when more than one otherwise acceptable bid has been received), or by using the non- competitive proposals method and following Section E Paragraph 2 above, (when only one bid is received at an unreasonable price); provided, that the Commissioner/Director of Purchasing determines in writing that such action is appropriate, all bidders are informed of the Town of Babylon's intent to negotiate, and each responsible bidder is given a reasonable opportunity to negotiate.

I. COOPERATIVE PURCHASING

The Town of Babylon may enter into agreements with municipal corporations to purchase or use common goods and services. Any city, town, county village, fire district, school district, BOCES and town or county improvement districts may enter into cooperative purchase agreements amongst themselves. The decision to use an inter-governmental agreement or conduct a direct procurement shall be based on economy and efficiency. If used, the inter-governmental agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. Properly approved and executed inter-municipal agreements must be executed by the Town and any city, town, county village, fire district, school district, BOCES and town or county improvement districts. These agreements should have a term after which such agreements should be renewed subject to mutual agreement of both parties. All laws relating to competitive bidding or competitive offering must be complied with and the cooperative agreement must be approved by each board, must be in place prior to the solicitation of bids.

The Town of Babylon may also make purchases, or may contract for services, other than services subject to Article 8 or 9 of the labor law, when available, through the county in which the political subdivision or district is located or through any county within the state subject to the rules established pursuant to subdivision two of section four hundred eight-a of the county law.

The Town of Babylon further may make such purchases, except of printed material, through the New York State Office of General Services subject to such rules as may be established from time to time pursuant to section one hundred sixty-three of the state finance law or through the general services administration pursuant to section 1555 of the federal acquisition streamlining act of 1994, P.L. 103-355; provided that any such purchase shall exceed five hundred dollars.

The Town of Babylon may purchase from certain federal General Services Administration (GSA) contracts for the following services:

Information Technology and telecommunications hardware, software and professional services through cooperative purchasing (permissible pursuant to federal GSA supply Schedule 70.(See GMA section 104(2))

Certain equipment suitable for counter drug, homeland security and emergency response activities through the US Department of Defense

Alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing and related services, pursuant to the Federal Local Preparedness Acquisition

Act (Schedule 84)

Certain products and services to be used to facilitate recovery from major disasters declared by the President under the Robert T. Stafford Disaster Relief & Emergency Assistance Act or to facilitate recovery from terrorism or nuclear, biological, chemical or radiological

The Town of Babylon is encouraged to use Federal or State excess and surplus equipment or property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.

The Town, pursuant to General Municipal law 103, Subdivision 16 authorizes political subdivisions to purchase apparatus, materials, equipment and supplies and to contractor for services related to the installation, maintenance, or repair of those items through the use of contracts let by the United States or any agency thereof, any state or any political subdivision or district therein. The contract must be let in a manner that constitutes competitive bidding “consistent with state law” and made available for use by other governmental entities.

There are three (3) prerequisites that must be met in order for a procurement of apparatus, materials, equipment and supplies, and related installation, repair and maintenance services, to fall within this exception:

1. The contract must have been let by the United States or any agency thereof, any state or any other political subdivision or district therein. Therefore, there must be an underlying contract let by one of the listed governmental entities. Contracts developed for use by local governments that are let by private parties (e.g. a private company, association or not-for-profit corporation is the party awarding the contract to the vendor) and by the United States or any agency thereof, any state or any other political subdivision or district therein, would not fall within this exception. The phrase “any state or other political subdivision or district therein” clearly includes other states and political subdivisions. It also includes New York State political subdivisions.
2. The contract must have been made available for use by other governmental entities. This means that the other governmental entity has taken steps to make its contract available for New York local governments. In general, this would occur by inclusion in the contract let by the other entity of a clause extending the terms and conditions of the contract to other governmental entities. Unilateral offers by vendors to extend contract pricing and other terms and conditions would not fall within this exception.
3. The contract must have been let in a manner that constitutes competitive bidding “consistent with state law”. The contract must have been let to the lowest responsible bidder in a manner consistent with GML 103.

IV. CONTRACTOR QUALIFICATIONS AND DUTIES

A. CONTRACTOR RESPONSIBILITY

Procurements shall be conducted only with responsible contractors, i.e., those who have the technical and financial competence to perform and who have a satisfactory record of integrity. Before awarding a contract, the Town of Babylon shall review the proposed contractor’s ability to perform the contract successfully, considering factors such as the contractor’s integrity, compliance with public policy, compliance with applicable State, County and local regulations, record of past performance (including contacting previous clients of the contractor, such as other towns), and financial and technical resources of the firm or individual. If a prospective contractor is found by the Commissioner to be non-responsible, a written determination of non-responsibility shall be prepared and included in the contract file, and the prospective contractor

shall be advised in writing of the reasons for the determination. The prospective contractor, within five (5) days of receipt of written notice, may demand an opportunity to present evidence both orally and in writing to the Commissioner or his/her designee. If a demand for an opportunity to present evidence is received, the Commissioner shall schedule a hearing at which time the prospective contractor and counsel may be present and offer evidence. Within ten (10) business days, the Commissioner shall advise the prospective contractor whether the prospective contractor is deemed a responsible bidder and shall provide a written decision if the prospective contractor is deemed irresponsible. The Commissioner shall advise the Town Board of his/her decision regarding an irresponsible bidder and the Town Board shall state, by resolution, its determination whether a prospective contractor is irresponsible and provide a reason if a prospective contractor is determined to be irresponsible

B. SUSPENSION AND DEBARMENT

Contracts shall not be awarded to debarred, suspended or ineligible contractors as determined by the New York State Department of Labor. Contractors may be suspended, debarred, or determined ineligible by the Town of Babylon or HUD in accordance with HUD regulations (24 CFR Part 24) when necessary to protect the Town of Babylon in its business dealings. The Commissioner/Director of Purchasing may elect to hold a hearing at which time all facts concerning the matter may be discussed. The Commissioner shall be responsible to check all potential contractors to determine if they have been debarred, suspended or formally declared an irresponsible bidder.

C. QUALIFIED BIDDER'S LISTS

Interested and qualified businesses shall be given an opportunity to be included on qualified bidder's lists. Any pre-qualified lists of persons, firms, or products which are used in the procurement of supplies and services shall be kept current and shall include enough qualified sources to ensure competition. Firms shall not be precluded from qualifying during the solicitation period. Solicitation mailing lists of potential contractors shall include, but not be limited to such pre-qualified suppliers. Concurrent with the advertisement of a bid, all vendors on the appropriate bid list shall be notified electronically of availability of the bid.

TYPES OF CONTRACTS, CLAUSES, AND CONTRACT ADMINISTRATION

D. CONTRACT TYPES

Any type of contract which is appropriate to the procurement and which will promote the best interests of the Town of Babylon may be used, provided that the cost-plus-a-percentage-of-cost and percentage of construction cost methods are prohibited. All procurements shall include the clauses and provisions necessary to define the rights and responsibilities of the parties. A cost reimbursement contract shall not be used unless it is likely to be less costly or it is impractical to satisfy the Town of Babylon's needs otherwise, and the proposed contractor's accounting system is adequate to allocate costs in accordance with applicable cost principles (for commercial firms, Subpart 31.2 of the Federal Acquisition Regulation (FAR), found in 48 CFR Chapter 1). A time and material contracts may be used only if a written determination is made that no other contract type is suitable, and the contract includes a ceiling price that the contractor exceeds at its own risk.

E. OPTIONS

Options for additional quantities or performance periods may be included in contracts, provided that: (a) the option is contained in the solicitation; (b) the option is a unilateral right of the Town of Babylon with the concurrence of the vendor; (c) the contract states a limit on the additional quantities and the overall term of the contract; (d) the options are evaluated as part of the initial competition; (e) the contract states the period within which the options may

be exercised; (f) the options may be exercised only at the price specified in or reasonably determinable from the contract; that reasonable increases may be granted if deemed to be in the best interest of the Town and in the sole discretion of the Town; (g) the options may be exercised only if determined to be more advantageous to the Town of Babylon than conducting a new procurement; and (h) the scope of the contract is not being significantly altered.

F. CONTRACT CLAUSES

In addition to other provisions required by the Federal agency or non-Federal containing a clause identifying the contract type, all contracts for federally funded programs shall include any clauses required by Federal statutes, executive orders, and their implementing regulations, as provided in 2 CFR 200 Appendix II, such as the following:

1. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate,
2. All contracts in excess of \$10,000 must address termination for default and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement,
3. Equal Employment Opportunity,
4. Davis-Bacon Act and Copeland anti-kickback Act,
5. Contract Work Hours and Safety Standards Act,
6. Rights to inventions made under a contract or agreement,
7. Clean air act and the Federal Water Pollution Control Act,
8. Debarment and Suspension,
9. Byrd Anti-Lobbying Amendment,
10. Procurement of recovered materials.

G. The operational procedures required by section H paragraph A of this statement shall contain the text of all clauses and required certifications (such as required non-collusive affidavits) used by the Town of Babylon.

H. Price Increases: The Commissioner may grant a price increase for all or part of the goods referenced in any duly awarded contract, provided the vendor has provided the Commissioner/Director of Purchasing with written substantiation of the increase from their supplier/manufacturer. The price increase cannot exceed the amount of the requested increase by the supplier to the vendor. The Commissioner may elect to deny the request for an increase and rebid the entire contract. A request for an increase cannot be submitted until four (4) months from the date of the contract awarded.

I. CONTRACT ADMINISTRATION

A contract administration system designed to ensure that contractors perform in accordance with their contracts shall be maintained. The operational procedures required by Section HA above shall contain guidelines for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on construction contracts, and similar

matters. For cost reimbursement contracts with commercial firms, costs are allowable only to the extent that they are consistent with the cost principles in FAR Subpart 31.2.

V. SPECIFICATIONS

A. GENERAL

All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the Town of Babylon's needs. Specifications shall be reviewed prior to solicitation to ensure that they are not unduly restrictive or represent unnecessary duplicative items. Functional or performance specifications are preferred. Overly detailed product specifications shall be avoided whenever possible. Considerations shall be given to consolidating or breaking out procurements to obtain a more economical purchase (but see VIII below). For equipment purchases, a comparative analysis of a lease versus purchase analysis may be performed, whenever feasible, to determine the most economical form of procurement.

B. LIMITATIONS

The following specification limitations shall be avoided: Whenever possible geographic restrictions will not be mandated or encouraged (in accordance to applicable Federal law) (except for architect/engineer/consultant contracts, which may include geographic locations as a selection factor if adequate competition is available); unnecessary bonding or experience requirements; brand name specifications, to the extent practical, (unless a written determination is made that only the identified item will satisfy the Town of Babylon's needs); brand name or equal specifications (unless they list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use or the brand name is being utilized to set a standard, but not overly restrict the competitive bidding process). Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be scrutinized to ensure that organizational conflicts of interest do not occur (for example, having a consultant perform a study of the Town of Babylon's computer needs and then allowing that consultant to compete for the subsequent contract for the computers).

VI. PROCUREMENT WHERE CDBG/HOME FUNDS ARE USED

A. REQUESTS FOR PROPOSALS (RFP)

1. 2 CFR 200.320(d) - Procurement by competitive proposals, provides that the technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.
 - a. The competitive proposals method is the preferred method to use when procuring consulting services.
2. If this method is used the following requirements apply:
 - a. RFP will be publicized and identify all evaluation factors and their relative importance. Any response to publicized RFP shall be honored to the maximum extent practical;
 - b. Proposals will be solicited from an adequate number of qualified sources;

- c. Grantees and sub-grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
 - d. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - e. Grantees and sub-grantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort
3. RFP Implementation Process
- a. A RFP is prepared containing a statement of work that details the procurement requirements needed by the recipient/sub-recipient.
 - b. The RFP must clearly state selection criteria against which all responding proposals will be evaluated.
 - c. If an adequate number of professional service providers respond to the RFP, a qualified panel will review the proposals against factors for award identified in the RFP.
 - d. If discussions are held (by the panel), "best and final offers" are requested and re-scored with the best of the best selected as the winner of the competition, subject to negotiation of a fair and reasonable price.
 - e. After proposals are reviewed by the panel against the evaluation criteria (combination of price and cost factors) in the RFP, written results of the reviews must be maintained as part of the documentation of the procurement process.
 - f. If requested, the recipient/sub-recipient should debrief or notify unsuccessful offeror not the winner and the conclusion of the procurement process.

B. SMALL PURCHASES

1. *2 CFR 200.320(b)*- Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold, currently set at 150,000 for 2018. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.
2. Small Purchase Implementation Process
 - a. It is necessary to obtain price or rate quotations from an adequate number (3-5) of qualified sources.
 - b. To obtain rate and price quotations vendors can be phoned and their names, addresses and price or rate quotations should be recorded.

- c. The vendors whose solicited information is the most responsive to the item being procured should be issued a purchase order.

C. SEALED BIDS

1. *2 CFR 200.320(c)*- Procurement by sealed bids (formal advertising) are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.
 - a. The sealed bid method is the preferred method for procuring construction services.
2. Sealed Bid Implementation Process
 - a. This method of procurement must involve use of a public solicitation (issuance of an invitation for bid (“IFB”)) with specifications to be responded to that are not overly restrictive.
 - b. Award is to be made to the most responsive and responsible bidder whose bid conforms in all the material terms and conditions to the IFB and is the lowest in price.
 - c. Selection of a consultant can be principally made on the basis of a firm, fixed price (lump sum or unit price).

D. USE OF NON-COMPETITIVE PROCEDURES

1. *2 CFR 200-320(f)* - Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source.
 - a. Procurement by noncompetitive proposals may only be used when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one or more of the following circumstances applies:
 - i. The item is available only from a single source;
 - ii. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - iii. The awarding agency expressly authorizes noncompetitive proposals; or
 - iv. After solicitation of a number of sources, competition is determined inadequate.
2. Non-Competitive Implementation Process:
 - a. Examples of Non-Competitive procedures include when a contract runs out that does not contain a provision calling for work for more than one year, and the contract is renewed to the same contractor without competition on the belief that the renewal is justified because of the experience accumulated by the contractor in the subject area of work (or because of the perception that a new procurement initiative would be no more than an exercise with the current contractor being selected anyway).
 - b. If there is no provision for extending the contract, a provision that would have been made known to all parties in the solicitation document, the preponderance of

odds seemingly favoring one contractor is not an adequate basis on which to justify the exclusion of potential providers of consulting service from the right to compete.

VII. APPEALS AND REMEDIES

A. GENERAL

It is the Town of Babylon's policy to attempt to resolve, to the extent possible, all contractual issues informally at the departmental level, without litigation. Disputes involving federally funded projects shall not be referred to HUD until all administrative remedies have been exhausted at the Town of Babylon level. When appropriate, the Town of Babylon may consider the use of informal discussions between the parties by individuals who did not participate substantially in the matter in dispute, to help resolve the differences. HUD will only review protests in cases of violations of Federal law or regulations and failure of the Town of Babylon to review a complaint or protest.

B. BID PROTESTS

Any actual or prospective contractor/vendor may protest the solicitation or award of a contract for serious violations of the principles of this Statement. Any protest against solicitation must be received before the due date for receipt of bids or proposals, and any protest against the award of a contract must be received within ten calendar days after contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Commissioner/Director of Purchasing or designee, who shall issue a written decision on the matter. The Commissioner/Director of Purchasing may, at his or her discretion, suspend the procurement pending resolution of the protest, if warranted by the facts presented. The Commissioner/Director of Purchasing may elect to hold a hearing to investigate and gather facts regarding the bid protests. The Commissioner/Director of Purchasing will issue an evaluation of the bid protests and document in writing.

C. CONTRACT CLAIMS

All claims by a contractor/vendor relating to performance of a contract shall be submitted within fifteen (15) days of when the claim arose in writing to the Commissioner/Director of Purchasing or designee for a written decision. The contractor may request a conference on the claim.

VIII. ASSISTANCE TO SMALL AND OTHER BUSINESSES

A. REQUIRED EFFORTS

1. Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, the Town of Babylon shall make efforts to ensure that small and minority-owned businesses, women's business enterprises, and individuals or firms located in or owned in substantial part by persons residing in the area of a Town of Babylon project are used when possible and not in violation of State law or in conflict with any other section of this policy. Such efforts shall include, but shall not be limited to:
 - a. Including such firms, when qualified, on solicitation mailing lists;

- b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, to extent practical, and not in violation of State law, into smaller tasks or quantities to permit maximum participation by such firms;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
 - e. Using the services and assistance of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the New York State Department of Economic Development;
 - f. Including in contracts a clause recommending that contractors, to the greatest extent feasible, to provide opportunities for training and employment for lower income residents of the project area and to award sub-contracts for work in connection with the project to business concerns which are located in, or owned in substantial part by persons residing in the area of the project, as described in 24 CFR 135;
 - g. Recommending prime contractors, when sub-contracting is anticipated, to take the positive steps listed in (A)(1)(a) through (A)(1)(f) above.
2. Goals may be established by the Town of Babylon periodically for participation by small businesses, minority-owned businesses, women's business enterprises, labor surplus area businesses, and business concerns which are located in, or owned in substantial part by persons residing in the area of the project, in the Town of Babylon's prime contracts and sub-contracting opportunities. All of the above must be in full compliance with New York State General Municipal Law.

B. DEFINITIONS

1. A small business is defined as a business which is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR 121 shall be used, unless the Town of Babylon determines that their use is inappropriate.
2. A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans, and Hasidic Jewish Americans.
3. A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who also control or operate the business.
4. A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR 654, Subpart A, and in lists of labor surplus areas published by the Employment and Training Administration.

5. A business concern located in the area of the project, is defined as an individual or firm located within the relevant Section 3 covered project area, as determined pursuant to 24 CFR 135.15, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above. A business concern owned in substantial part by persons residing in the area of the project is defined as a business concern which is 51% or more owned by persons residing within the Section 3 covered project, owned by persons considered by the U.S. Small Business Administration to be socially or economically disadvantaged, listed on HUD's registry of eligible business concerns, and meeting the definition of small business above.
6. The Town of Babylon will utilize the New York State certification process for minority owned businesses and women owned businesses as provided by State of New York. The Town will utilize listings of minority owned businesses and women owned business as published by the State of New York to enhance its current bidder's lists.

IX. ETHICS IN PUBLIC CONTRACTING

A. GENERAL

The Town of Babylon shall adhere to the following code of conduct, consistent with applicable State or local law.

B. CONFLICT OF INTEREST

No employee, officer or agent of this Town of Babylon shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

1. An employee, officer or agent involved in making the award;
2. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister);
3. His/her partner; or,
4. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.

The Code of Ethics as specified by the Town of Babylon will be adhered to by all employees.

All offerors and bidders shall submit a statement acknowledging that there are no employees, officers or agents of the Town of Babylon participating directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved.

C. GRATUITIES, KICKBACKS AND USE OF CONFIDENTIAL INFORMATION

Town of Babylon officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-

contractors in violation of the Town Code of Ethics, and shall not knowingly use confidential information for actual or anticipated personal gain.

D. PROHIBITION AGAINST CONTINGENT FEES

Contractors shall not retain a person to solicit or secure a Town of Babylon contract for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial selling agencies.