

## **MIDDLETOWN COMMUNITY DEVELOPMENT AGENCY PROCUREMENT POLICY**

### **A. Introduction**

1. Scope – In accordance with Article 15-A of the General Municipal Law (“GML”) (and, specifically, Section 554-a of the GML), Section 104-b of the General Municipal Law, and the Public Authorities Accountability Act of 2005, the Middletown Community Development Agency (“the CDA”) is required to adopt procurement policies which will apply to the procurement of goods and services (in addition to those subject to the competitive bidding requirements of Section 103 of the GML) and paid for by the CDA for its own use, purposes and account.
2. Purpose – Pursuant to Section 104-b of the GML, the primary objectives of this policy are to assure the prudent and economical use of public monies in the best interest of the taxpayers of a political subdivision or district, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances and to guard against favoritism, improvidence, extravagance, fraud and corruption.

### **B. Procurement Policy**

1. Application of City of Middletown Procurement Policy – Pursuant to Section 554-a of the GML, the procurement policy of the City of Middletown applies to procurements by the CDA. To the extent a particular procurement is not covered by the City of Middletown policy, or to extent there is a variance between the City’s policy and this policy, this policy will govern.
2. Procedure for determining whether Procurements are subject to Competitive Bidding – The procedure for determining whether a procurement of goods and services is subject to competitive bidding shall be as follows:
  - a. The Executive Director or an authorized designee shall make the initial determination as to whether competitive bidding is required. This determination will be based on Section 103 of the GML which requires competitive bidding for expenditures of (1) more than \$35,000.00 for the performance of any public works contract (services, labor or constructions), and (2) more than \$20,000.00 for any purchase contract (acquisition of commodities, materials, supplies or equipment).
  - b. The Executive Director or such authorized designee shall review the purchase request against prior years’ expenditures (if applicable) and will make a good

faith effort to determine whether it is known or can reasonably be expected that the aggregate purchases of a similar nature will exceed the above amounts. If so, competitive bidding procedures shall be followed for that expenditure.

c. The Executive Director or such authorized designee shall present any legal issues regarding the applicability of the competitive bidding requirements stated herein to the CDA's Counsel for an opinion and advice.

3. Methods of Competition to be used for Non-Bid Procurements and Procurements Exempt by Statute – Alternative proposals or quotations for goods and services shall be secured in all cases when possible by use of written requests for proposals or written quotations, verbal quotations or any other method of procurement which furthers the purposes of this Section, such as through

a. GML, Section 103 (3) (through county contracts), or

b. GML, Section 104 (through state contracts), or

c. State Finance Law, Section 175-b (from agencies for the blind or severely handicapped), or

d. Correction Law, Section 186 (articles manufactured in correctional institutions).

4. Procedures for the Purchase of Commodities, Equipment or Goods under \$20,000.00.

a. Up to \$1,999.99 – Appropriate verbal quotations from vendors.

b. \$2,000.00 to \$4,999.99 - Documented verbal quotations from at least three vendors.

c. \$5,000.00 to \$19,999.00 - Written/fax quotations from at least three vendors.

5. Procedures for the Purchase of Public Works or Services under \$35,000.00.

a. Up to \$1,999.99 - Appropriate verbal quotations from vendors.

b. \$2,000.00 to \$4,999.99 - Documented verbal quotations from at least three vendors.

c. \$5000.00 to \$34,999.99 - Written/fax quotations from at least three vendors.

6. Basis for the Award of Contracts – Contracts will be awarded to the lowest responsible vendor who meets the specifications.

7. Circumstances justifying an Award to other than the Lowest Cost quoted

a. Delivery requirements

b. Quantity requirements

c. Quality

d. Past vendor performance

e. The unavailability of three or more vendors who are able to quote on a procurement, or

f. It may be in the best interests of the Agency to consider only one vendor who has previous expertise with respect to a particular procurement.

8. Documentation

a. For each purchase or contract made, the Executive Director or authorized designee shall set forth in writing the category of procurement that is being made and what method of procurement is specified.

b. The basis for any determination that competitive bidding is not required shall be documented, in writing, by the Executive Director or such authorized designee, and filed with the purchase order or contract.

c. For those items not subject to competitive bidding such as professional services, emergencies, purchases under city contracts or procurements from sole sources, documentation should include a memo to the files which details why the procurement is not subject to competitive bidding and include, as applicable:

1. a description of the facts giving rise to the emergency and that they meet the statutory criteria; or
2. a description of the professional services; or
3. written verification of city contracts; or
4. opinions of CDA Counsel, if any; or
5. a description of sole source items and how such determinations were made.

d. Whenever an award is made to other than the lowest quote the reasons for doing so shall be set forth in writing and maintained in the procurement file.

e. Whenever the specified number of quotations cannot or will not be secured, the reasons for this shall be indicated in writing and maintained in the procurement file.

#### 9. Exceptions to Bidding

a. Emergency Situation – An emergency exists if the delay caused by soliciting quotes would endanger the health, welfare or property of the municipality or of the citizens. With approval by the Executive Director and the CDA Counsel, such emergency shall not be subject to competitive bidding or the procedures state above.

b. Resolution Waiving bidding Requirements – The CDA may adopt a resolution waiving the competitive bidding requirements whenever it is determined to be impracticable, and the resolution shall set forth the reasons.

c. Sole Source – Defined as a situation when there is only one possible source from which to procure goods and/or services and it is shown that the item needed has unique benefits, the cost is reasonable for the product offered and there is no competition available. In this situation, a request for a resolution waiving bidding requirements, as described above, is required.

d. True Lease – Prices will be obtained through quotations whenever possible. The award shall be made on the basis of goods and /or services to be provided, ability to meet the specifications desired and price.

e. Insurance – All insurance policies shall be procured in accordance with the following procedures:

1. Premium less than \$10,000 – documented telephone quotations from at least three agents (if available).

2. Premium over \$10,001 – written quotations/fax or proposals from at least three agents (if available).

f. Professional Services – This category includes services which require special education and/or training, license to practice or are creative in nature. Examples of professional services are: lawyers, doctors, accountants, engineers, artists, etc. For the procurement of professional services, requests for proposals should be used, when possible, and if the CDA waives the need for RFPs, the reasons for such waiver(s) should be included in any resolution approving such professional services.

10. Minority and Women business Enterprises – The CDA shall comply with all applicable legal requirements relating to the hiring of such businesses.

11. Input from members of the CDA – Comments concerning the procurement policy shall be solicited from the members of the CDA from time to time.

12. Annual Review - The CDA shall annually review its policies and procedures, including this procurement policy.

13. Unintentional Failure to Comply – The unintentional failure to comply with the provisions of this policy or the requirements of law shall not be grounds to void action taken or give rise to a cause of action against the CDA or any officer thereof.

Approved and adopted this 6 day of May, 2014.

**MIDDLETOWN COMMUNITY DEVELOPMENT AGENCY  
TRAVEL POLICY**

**Section 1. APPLICABILITY**

This policy shall apply to every member of the Board or Directors (the “Board”) of the Middletown Community Development Agency (the “Agency”) and its officers and employees.

**Section 2. APPROVAL OF TRAVEL**

All official travel for which a reimbursement will be sought must be approved by the Board prior to such travel.

**Section 3. PAYMENT OF TRAVEL**

The Agency will reimburse all reasonable expenses related to meals, travel and lodging that were incurred by any Board member, officer or employee as a result of the performance of their official duties. All official travel shall be properly organized, reported and reimbursed. Under no circumstances shall expenses for personal travel be charged to, or temporarily funded by the Agency. It is the traveler’s responsibility to report his or her travel expenses in a responsible and ethical manner, in accordance with this policy.

**Section 4. TRAVEL EXPENSES**

Travelers may use their private vehicle for business purposes if it is less expensive than renting a car, taking a taxi, or using alternative transportation, or if it saves time. The traveler will be reimbursed at a standard mileage reimbursement rate.

Meals will be reimbursed at actual expense or per diem rate as established by the City of Middletown, whichever is less. Lodging will be reimbursed at actual expense up to certain daily rate caps established for various locations. The applicability of such caps shall be determined on a case by case basis taking into consideration availability of lodging and other extenuating circumstances.

Reimbursement for miscellaneous expenses shall be determined on a case by case basis. Mileage rates, per diem allowances and lodging caps will be established and from time to time amended by the Board.

Approved and adopted this 6 day of May, 2014.

**MIDDLETOWN COMMUNITY DEVELOPMENT AGENCY  
WHISTLEBLOWER POLICY**

Every member of the Board of Directors (the “Board”) of the Middletown Community Development Agency (the “Agency”) and all officers and employees thereof, in the performance of their duties shall conduct themselves with honesty and integrity and observe the highest standards of business and personal ethics as set forth in the Code of Ethics of the Agency (the “Code”).

Each member, officer or employee is responsible to report any violation of the Code (whether suspected or known) to the Agency’s Executive Director. If the suspected or known violation is by the Executive Director, the report must be made to the Chairman of the Board. Reports of violations will be kept confidential to the extent possible. No individual, regardless of his or her position with the Agency, will be subject to any retaliation for making a good faith claim and, any Board member, officer or employee who chooses to retaliate against someone who has reported a violation, shall be subject to disciplinary action which may include termination of membership on the Board or employment. Regardless, any claim of retaliation will be taken and treated seriously and irrespective of the outcome of the initial complaint, will be treated as a separate offense.

The Executive Director is responsible for immediately forwarding any claim to the Agency’s counsel who shall investigate and handle the claim in a timely manner and who will report his or her findings to the Board for appropriate action, if any.

Approved and adopted this 6 day of May, 2014.

**MIDDLETOWN COMMUNITY DEVELOPMENT AGENCY  
COMPENSATION, REIMBURSEMENT AND ATTENDANCE POLICY**

Pursuant to and in accordance with Sections 553 and 601-A of the General Municipal Law (“GML”) of the State of New York, the members of the Board of Directors of the Middletown Community Development Agency (the “Board”) shall serve without salary but may be reimbursed for reasonable expenses incurred in the performance of the Agency duties upon the approval of the Board.

The officers, employees and agents of the Agency shall serve at the pleasure of the Agency at such compensation levels as may be approved by the Board from time to time and may be reimbursed for reasonable expenses incurred in the performance of Agency duties upon the approval of the Board. If officers, employees or agents of the Agency are also employees or agents of the City of Middletown, the Agency shall pay to the City of Middletown the Agency’s agreed proportion of the compensation or costs in accordance with Section 554 of the GML.

The members of the Board and officers and employees of the Agency shall be available as required to perform the operations of the Agency and as set forth within the By-Laws of the Agency, as may be amended, restated or revised by the Board from time to time. Said members and officers and employees of the Agency shall put forth their reasonable best efforts to perform their respective duties as outlined in the By-Laws of the Agency and any other directives of the Board relating to same.

Approved and adopted this 6 day of May, 2014.

**MIDDLETOWN COMMUNITY DEVELOPMENT AGENCY  
DEFENSE AND INDEMNIFICATION POLICY**

Pursuant to the By-Laws of the Middletown Community Development Agency (the “Agency”), the Agency shall indemnify all members of the Board of Directors of the Agency (“the Board”) and each officer and employees thereof, in the performance of their duties, and to the extent authorized by the Board, each other person authorized to act for the Agency or on its behalf, to the fullest extent to which indemnification is permitted under the General Municipal Law of the State of New York. The Agency may purchase such insurance policy or policies to effectuate this purpose as the Board may from time to time determine to be appropriate.

Approved and adopted this 6 of May 2014.

**MIDDLETOWN COMMUNITY DEVELOPMENT AGENCY  
CODE OF ETHICS**

The members of the Board of Directors (the “Board”) of the Middletown Community Development Agency (the “Agency”), along with the officers and employees of the Agency, shall comply with and adhere to the provisions of Article 18 of the General Municipal Law of the State, entitled Conflicts of Interest of Municipal Officers and Employees.

In addition, no member of the Board, officer, or employee of the Agency shall:

(1) Accept other employment which will impair his or her independence of judgment in the exercise of his or her official duties for the Agency;

(2) accept employment or engage in any business or professional activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her official position of authority with the Agency;

(3) disclose confidential information acquired by him or her in the course of his or her official duties with the Agency nor use such information to further his or her personal interests;

(4) Use or attempt to use his or her official position with the Agency to secure unwarranted privileges or exemptions for himself, herself or others;

(5) Engage in any transaction as a representative or agent of Agency with any business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with proper discharge of his or her official duties with the Agency;

(6) not, by his or her conduct, give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties with the Agency, or that he or she is affected by the kinship, rank, position or influence of any party or person;

(7) abstain from making personal investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by him or her or which will otherwise create substantial conflict between his or her official duties with the Agency and his or her private interest; and

(8) endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in or that are in violation of his or her trust in connection with his or her official duties with the Agency.

Approved and adopted this 6 day of May, 2014.

**MIDDLETOWN COMMUNITY DEVELOPMENT AGENCY  
DISPOSITION OF REAL PROPERTY GUIDELINES ADOPTED  
PURSUANT TO SECTION 2896 OF THE PUBLIC AUTHORITIES LAW**

**SECTION 1. DEFINITIONS**

A. “Contracting officer” shall mean the officer or employee of the Middletown Community Development Agency (“the Agency”) who shall be appointed by resolution or the By-Laws to be responsible for the disposition of the property.

B. “Dispose” or “disposal” shall mean transfer of title or any other beneficial interest in personal or real property in accordance with section 2897 of the Public Authorities Law.

C. “Property” shall mean personal property in excess of five thousand dollars (\$5000.00) in value, and real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

**SECTION 2. DUTIES**

A. The Agency shall:

1. maintain adequate inventory controls and accountability systems for all property owned by the Agency and under its control;

2. periodically inventory such property to determine which property shall be disposed of;

3. produce a written report of such property in accordance with subsection B herewith; and

4. transfer or dispose of such property as promptly and practicably as possible in accordance with Section 3 below.

B. The Agency shall:

1. publish, not less frequently than annually, a report listing all real property owned in fee by the Agency. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Agency and other relevant terms and

conditions of the sale and the name of the purchaser for all such property sold by the Agency during such period and

2. deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of the State of New York, the Commissioner of the New York State Office of General Services, and the New York State Legislature (via distribution to the majority leader of the Senate and the Speaker of the Assembly).

### SECTION 3. TRANSFER OR DISPOSITION OF PROPERTY

A. Supervision and Direction. Except as otherwise provided herein, the duly appointed contracting officer (the “Contracting Officer”) shall have supervision and direction over the disposition and sale of property of the Agency, upon the approval of the Board of Directors of the Agency (“the Board”). The Agency shall have the right to dispose of its property for any valid corporate purpose and/or in accordance with the Agency’s Urban Renewal Plan, as the same may be amended from time to time. To the extent the Guidelines contained herein are in conflict with the Urban Renewal Plan, the terms of the Urban Renewal Plan shall govern.

B. Custody and Control. The custody and control of Agency property, pending its disposition, and the disposal of such property, shall be under the auspices of the Board.

C. Method of Disposition. Unless otherwise permitted by the Urban Renewal Plan, the Agency shall dispose of property for not less than its fair market value by sale, exchange or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Board deems proper. The Agency may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, except in compliance with all applicable laws, no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing shall be made unless an appraisal for the value of such property has been made by an independent appraiser and included in the record of the transaction or such other documentation is provided as may be required or recommended by the Urban Renewal Plan.

D. Validity of Deed, Bill of Sale, Lease, or Other Instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Agency, purporting to transfer title or any other interest in property of the Agency in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law insofar as may concern title or other interest of any bona fide grantee or transferee who has given valuable

consideration for such title or other interest and has not received actual or constructive notice of the lack of such compliance prior to the closing.

E. Bids for Disposal; Advertising; Procedure; Disposal by Negotiation; Explanatory Statement.

1. Except as permitted by applicable law or the Urban Renewal Plan, all disposals or contracts for disposal of property made or authorized by the Agency shall be made after publicly advertising for bids except as provided in subsection 3 of this Section E.
2. Whenever public advertising for bids is required under subsection 1 of this Section E:
  - a. the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property proposed for disposition;
  - b. all bids shall be publicly disclosed at the time and place stated in the advertisement; and
  - c. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Agency, price and other factors considered; provided, that all bids may be rejected at the Agency's discretion.
3. Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsections 1 and 2 of this Section E but subject to obtaining such competition as is feasible under the circumstances, if:
  - a. the personal property involved is of a nature and quantity which, if disposed of under subsections 1 and 2 of this Section E, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
  - b. the fair market value of the property does not exceed fifteen thousand dollars;

c. bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

d. the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

e. the disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, the disposal for the property is intended to further the public health, safety or welfare or an economic development interest of the Agency, the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits or other economic development initiatives), the purpose and the terms of such disposal are documented in writing and approved by resolution of the Board; or

f. such action is otherwise authorized by law.

4. a. An explanatory statement shall be prepared regarding the circumstances of each disposal of property by negotiation of:

1. any personal property which has an estimated fair market value in excess of fifteen thousand dollars;

2. any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses 3 through 5 of this subparagraph;

3. any real property disposed of by lease for a term of five years or less, if the estimated fair annual rent is in excess of one hundred thousand dollars for any of such years;

4. any real property disposed by lease for a term of more than five years, if the total estimated rent over the terms of the lease is in excess of one hundred thousand dollars; or

5. any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

b. Each such statement shall be transmitted to the persons entitled to receive copies of the report required under all applicable law not less than ninety (90) days in advance of such disposal, and a copy thereof shall be preserved in the files of the Agency making such disposal.

These Guidelines are subject to modification and amendment at the discretion of the Board and shall be filed annually with all local and state agencies as required under applicable law.

The designated Contracting Officer for the Agency is the Executive Director.

Approved and adopted this 6 day of May, 2014.