

PROCUREMENT POLICY FOR THE VILLAGE NYACK

1. Every purchase to be made must be initially reviewed to determine whether it is a purchase contract or a public works contract. Once that determination is made, a good faith effort will be made to determine whether it is known or can reasonably be expected that the aggregate amount to be spent on the item of supply or service is not subject to competitive bidding, taking into account past purchases and the aggregate amount to be spent in a year. The following items are not subject to competitive bidding pursuant to Section 103 of the General Municipal Law:

1(a) Purchase contracts under \$20,000;

1(b) Public works contracts under \$35,000;

1(c) Emergency purchase contracts or public works contracts arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants of the Village of Nyack require immediate action which can not await competitive bidding or competitive offering;

1(d) Purchases under State or Village contracts (Section 103(3) of the General Municipal law);

1(e) Certain municipal hospital purchases;

- 1(f) Goods purchased from agencies for the blind or severely handicapped (Section 175-b of the State Finance Law), goods purchased from correctional institutions (Section 186 of the Correction Law), and surplus and secondhand purchases from another governmental entity.

The decision that a purchase is not subject to competitive bidding will be documented in writing by the individual making the purchase. This documentation may include written or verbal quotes from vendors, a memo from the purchaser indicating how the decision was arrived at, a copy of the contract indicating the source which makes the item or service exempt, a memo from the purchaser detailing the circumstances which led to an emergency purchase, or any other written documentation that is appropriate.

2. Except in the case of purchases which are not subject to competitive bidding (or made pursuant to subdivision 6 of this policy), all goods and services will be secured by use of written requests for proposals, written quotations, verbal quotations, or any other method that assures that goods will be purchased at the lowest price and that favoritism will be avoided.
3. The following method of purchase will be used when required by this policy in order to achieve the highest savings:

<u>Estimated Amount of Purchase Contract</u>	<u>Method</u>
\$ 250 - \$2,999	2 verbal quotations
\$3,000 - \$19,999	3 written/fax quotations or written request for proposals

Any purchase of goods in excess of \$500 shall require a Purchase Order generated by the office of the Village Clerk.

<u>Estimated Amount of Public Works Contract</u>	<u>Method</u>
\$ 250 - \$ 2,999	2 verbal quotations
\$3,000 - \$ 14,999	2 written/fax quotations
\$15,000 - \$34,999	3 written/fax quotations or written request for proposals

A good faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or quotations, the purchaser will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement.

4. Documentation is required of each action taken in connection with each procurement.
5. Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offerer. This documentation will include an explanation of how

the award will achieve savings or how the offerer was not responsible. A determination that the offerer is not responsible shall be made by the purchaser and may not be challenged under any circumstances.

6. Pursuant to General Municipal Law Section 104-b(2) (g), the procurement policy may contain circumstances when, or types of procurements for which, in the sole discretion of the governing body, the solicitation of alternative proposals or quotations will not be in the best interest of the municipality. In the following circumstances it may not be in the best interests of the Village of Nyack to solicit quotations or document the basis for not accepting the lowest bid:

6(a) Professional services or services requiring special or technical skill, training or expertise, in which case the individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity, and moral worth. These qualifications are not necessarily found in the individual or company that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

In determining whether a service fits into this category the Board of Trustees shall take into consideration the following guidelines: (a) Whether the services are subject to State licensing or testing requirements; (b) Whether substantial formal education or training is a necessary prerequisite to the performance of the services; and, (c) Whether the services require a personal

relationship between the individual and municipal officials. Profession or technical services shall include but not be limited to the following: Services of an attorney; services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public account; investment management services; printing services involving extensive writing, editing or art work; management of municipally owned property; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

6(b) Emergency purchase contracts or public works contracts as described in section 103(4) of the General Municipal Law and outlined in paragraph 1(c) hereinabove. Due to the nature of this exception, public works contracts must be let, or goods or services must be purchased immediately, and a delay in order to seek competitive bids or alternate proposals may threaten the life, health, safety or welfare of the residents. This section does not preclude alternate proposals if time permits.

6(c) Purchase of surplus and secondhand goods from any source. If alternate proposals are required, the Village is precluded from purchasing surplus and secondhand goods at auctions or through specific advertised sources where the best prices are usually obtained. It is also difficult to try to compare prices of used goods and a lower price may indicate an older product.

6(d) Goods or services under \$500. The time and documentation required to purchase through this policy may be more costly than the item itself and would therefore not be in the best interests of the taxpayer. In addition, it is not likely that such de minimis contracts would be awarded based on favoritism.

7. Ethical requirements for Public Contracting with the Village of Nyack

7(a) Employee conflict of interest.

It shall be unethical for any Village of Nyack employee to participate directly or indirectly in a procurement contract when the Village employee knows that:

(i) The Village of Nyack employee or any member of the Village employee's immediate family has a financial interest pertaining to the procurement contract; or

(ii) Any other person, business, or organization with which the Village employee or any member of a Village employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract. A Village of Nyack employee or any member of a Village employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

7(b) Gratuities and kickbacks.

Gratuities. It shall be unethical for any person to offer, give, or agree to give any Village employee or former Village employee, or for any Village employee or former Village employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

7(b)(i) Contract clause. The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefor.

7(c) Prohibition against contingent fees.

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a Village contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established

commercial selling agencies for the purpose of securing business.

7(d) Contemporaneous employment prohibited.

It shall be unethical for any Village employee who is participating directly or indirectly in the procurement process to become or to be, while such a Village employee, the employee of any person contracting with the governmental body by whom the employee is employed.

7(d)(i) Waivers for contemporaneous employment prohibition and other conflicts of interest.

The Village Board of Trustees may grant a waiver from the employee conflict of interest provision (§7(a), Employee conflict of interest) or the contemporaneous employment provision (§7(c), Contemporaneous employment prohibited) upon making a written determination that:

>The contemporaneous employment or financial interest of the Village employee has been publicly disclosed;

>The Village employee will be able to perform his/her procurement functions without actual or apparent bias or favoritism; and

>The award will be in the best interests of the Village of Nyack.

7(e) Use of confidential information.

It shall be unethical for any Village employee or former Village employee to knowingly use confidential information for actual or anticipated personal gain, or for the actual or personal gain of any other person.

7(f) Sanctions

7(f)(i) Employees Sanctions against employees shall be in accordance with Chapter 33 of the Code of the Village of Nyack (Code of Ethics).

7(f)(ii) Nonemployees. The Director of Purchasing may impose any one or more of the following sanctions on a nonemployee for violations of ethical standards: Written warnings or reprimands; Termination of contracts; or Debarment or suspension as provided in § 140-6.2 (Authority to debar or suspend).

7(g) Criminal penalties.

To the extent that violations of the ethical standards of conduct set forth in this article constitute violations of any New York State, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article. Criminal, civil and administrative sanctions against employees or nonemployees which are in existence on the effective date of this policy shall not be impaired.

This policy is effective for 2022, and will be reviewed annually.

Resolution to adopt: Trustee Louise Parker

Seconded: Trustee Joseph Rand

Adopted by a unanimous vote.

Duly adopted at the regularly scheduled meeting of the Nyack Village Board held on July 14,
2022.