

**CLAYTON LOCAL DEVELOPMENT CORPORATION**  
**PROCUREMENT POLICY**

**March 4, 2010**

**Revised: April 5, 2018**

A. Introduction

1. Scope – These procurement policies apply to the procurement of goods and services to be paid for by the Clayton Local Development Corporation (the “Corporation”) and are in accordance with the Not-For-Profit Corporation Law and the Public Authorities Accountability Act of 2005.
2. Purpose – Pursuant to applicable statutes, the primary objectives of the policy are to assure the prudent and economical use of the Corporation’s monies, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost, and to guard against favoritism, improvidence, extravagance, fraud, and corruption.

B. Procurement Policy

1. 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 whether the Corporation contemplates expenditures for (1) the performance of any construction contract (services, labor or construction), and (2) for any purchase contract (acquisition of commodities, materials, supplies or equipment).
2. If the Executive Director determines that competitive bidding is not required, he/she shall state in writing the reasons for such determination. Such written statements shall be maintained in a specially designated procurement file.
3. Methods of Competition to be used for Non-Bid Procurements and Procurements Exempt by Statute - Alternative proposals or quotations for goods and services may be secured by use of written requests for proposals (“RFP”), requests for qualifications (“RFQ”) and/or written quotations, verbal quotations or any other method of procurement which furthers the purposes of this policy.
4. Procedures for the Purchase of Commodities, Equipment or Goods:
  - a. Up to \$500                               The discretion of the Executive Director or authorized designee.
  - b. \$501 - \$3,000                           Documented verbal quotations from at least three vendors.
  - c. \$3,001 – and up                       Signed quotations from at least three vendors.

5. Procedures for the Purchase of Construction Contracts or Professional Services:
  - a. Up to \$1000 The discretion of the Executive Director or authorized designee.
  - b. \$1,001 - \$5,000 Documented verbal quotations from at least three vendors.
  - c. \$5,001 and up Signed quotations from at least three vendors

6. Procurement Lobbying – The CLDC will designate an individual who will act as an authorized contact during each procurement activity. An impermissible contact is when a potential contractor initiates contact with someone other than the designated contact during a period when such contact attempts to influence the procurement activity which could be construed as a violation of procurement lobbying requirements.

If an impermissible contact occurs, the authority is required to maintain a written record of the contact. The bid award committee may investigate the impermissible contact, and if deemed in violation of the Public Officers Law gift thresholds (Section 73(5)) or Code of Ethics (Section 74), or the CLDC Ethics Policy, the bidder and any bid offers may be disqualified.

7. Basis for the Award of Contracts - Contracts will be awarded to the lowest responsible vendor who meets the specifications. 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. Such reasons may include:
  - a. Substantial deviations from bidding requirements
  - b. Past vendor performance
  - c. The unavailability of three or more vendors who are able to quote on procurement.
  - d. It may be in the best interests of the Corporation to consider only one vendor who has previous expertise with respect to a particular procurement.

8. 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. Documentation

- a. For those items not subject to competitive bidding such as professional services, emergencies, purchases under municipal or state 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:
  - i. a description of the professional services; or
  - ii. a description of the facts giving rise to the emergency and that they meet the statutory criteria; or

- iii. written verification of municipal or state contracts; or
- iv. a description of sole source items and how such determinations were made; or
- v. opinions of Counsel, if any

#### 10. Exceptions to Bidding

- a. Emergency Situations – 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 such emergency shall not be subject to competitive bidding or the procedures stated above.
- b. Resolution Waiving Bidding Requirements - The Corporation may adopt a resolution waiving the competitive bidding requirements whenever such bidding is determined to be impracticable.
- 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.

11. Minority and Women-Owned Business Enterprises - The Corporation shall comply with any participating grant program requirements and all applicable legal requirements.

#### 12. Prompt Payment Policy

- a. It is the policy of the CLDC to process contract payments efficiently and expeditiously so as to assure payment in a timely manner.
- b. Standards for Prompt Payment.
  - i. Starting the Payment Period. The period available to an agency to make a timely payment of an invoice without incurring an interest penalty shall begin on the invoice received date.
  - ii. Required Payment Date. The required payment date shall be: (i) thirty days; or (ii) in the case of contract changes, sixty days; or (iii) in the case of substantial completion payments or final payments on construction contracts, sixty days after the invoice received date, except as described in paragraph (c) below; or (iv) except as provided in subdivision (c)(iv), the required payment date for the release of retained amounts shall be in accordance with the contract and law,

and thirty days after the submission of a proper invoice for the return of the retained amounts.

- iii. Extension of the Required Payment Date. The date by which a contract payment may be made without the payment of interest may be extended by the time taken to satisfy or rectify any of the following: (i) the State Comptroller, in the course of an audit, determines that there is reasonable cause to believe that payment may not be properly due, in whole or in part, due to fault of the vendor; (ii) the necessary local municipal, County, State, or federal government appropriation required to authorize payment has not been made; (iii) a proper invoice must be examined by the State or federal government prior to payment; (iv) the goods have not been delivered or the construction or services have not been performed in compliance with the terms and conditions of the contract; (v) in the case of substantial or final payments on construction contracts, the field inspector determines that the vendor has failed to properly submit the necessary documents and other submissions prescribed by the contract specifications and requirements or by law in order to enable the agency to process the final payment properly and expeditiously; and (vi) when the required payment date falls on a weekend or observed holiday, the required payment date shall be extended to the next following business day.
  - iv. Proper Invoice Required to Initiate Payment. A proper invoice submitted by the vendor shall be required to initiate payment, except where the contract provides that the vendor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.
  - v. Receipt and Acceptance of Goods and Services. Agencies shall ensure that receipt and acceptance are executed within seven days unless otherwise specified in the contract. Receiving reports and invoices shall be stamped or otherwise annotated with the date upon receipt in the designated billing office.
- c. Interest Eligibility and Computation.
- i. Eligibility. When payments are made after the required payment date, interest shall be paid to the vendor based on the invoice received date. Interest shall be computed at equal to the overpayment rate as set by the New York State Commissioner of Taxation and Finance pursuant to subsection (e) of section one thousand ninety-six of the New York State tax law. Such interest rate shall not apply to contracts where, as part of the contract obligation, the CLDC is required to pay an interest rate other than the rate determined by the New York State Commissioner of Taxation and Finance.

- ii. The interest rate shall be set by the New York State Commissioner of Taxation and Finance and applied as the CLDC interest rate per three months. The new interest rate for each upcoming three-month period shall take effect on payments made on or after the effective date and shall notify in writing each active bid awardee as soon as is practicable after such determination is made, not to exceed thirty days.
- iii. Interest shall not be paid where: (i) payment on the invoice is delayed because of a disagreement between an agency and a vendor over the amount of the payment and other issues concerning compliance with the terms of a contract. Payments shall be made, and as required by these Rules, interest shall be paid, on undisputed amounts; (ii) the failure to make the contract payment is the result of a lien, attachment, or other legal process against the money due to the vendor; (iii) amounts are temporarily withheld in accordance with the contract; or (iv) the amount of the interest payment is less than ten dollars.
- iv. The following types of payments are ineligible for interest: (i) payments under the eminent domain law; (ii) payments to the federal government, to any state, county, or local municipality, to any public authority or public benefit corporation; (iii) payment in a situation where the CLDC takes a deduction permitted by law or contract against all or part of a payment due the vendor; or (iv) where, for reasonable cause, the CLDC determines not to release or to reduce retainage upon completion or substantial completion of a construction contract.
- v. Interest that is due shall be paid within twenty days of payment of the original invoice. The failure to make an interest payment within such twenty days shall not generate additional interest.
- d. Additional Requirements for Construction and Construction-Related Contracts.
  - i. Progress Payment. An agency may not approve a request for a progress payment unless the request includes:
    1. substantiation of the amounts requested, including: (A) an itemized list of the amounts requested related to the various elements of work required by the contract; (B) a listing of the amount included for work performed by each subcontractor under the contract; (C) a listing of the total amount of each subcontract under the contract; (D) a listing of the amounts previously paid to each such subcontractor under the contract; and (E) additional supporting data in a form or detail required by the contract or the resident engineer;
    2. certification by the prime contractor, that: (A) the amounts requested are only for performance in accordance with the

specifications, terms, and conditions of the contract; (B) payments to subcontractors and vendors have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of these Rules; and (C) the application does not include any amounts that the prime contractor intends to withhold or retain from a subcontractor or vendor in accordance with the terms and conditions of their subcontract/agreement except as may be allowed.

ii. Subcontracts.

1. All construction contracts awarded by the CLDC shall include:
  - (A) a payment clause that obligates the prime contractor(s) to pay each subcontractor and vendor (including a materials vendor) not later than seven days after receipt of payment out of amounts paid to the contractor by the CLDC for work performed by the subcontractor or supplier under that contract and that provides for the payment of interest by the prime contractor in accordance with Section 106-b of the New York State General Municipal Law on amounts not timely paid to a subcontractor, and
  - (B) a clause requiring the prime contractor to include in each of its subcontracts a provision requiring each subcontractor to include the same payment clause in their contracts with each lower-tier subcontractor or vendor.
2. If a prime contractor is paid interest earned due to late payments by an agency, the proportionate share of that interest shall be forwarded by the prime contractor to each of its subcontractors and vendors.

e. Determination of Appropriations Against Which Interest Penalties Shall Be Charged. Except where otherwise required by law, an interest payment required by these Rules shall be paid from the agency expense budget of the agency awarding the contract, provided however that if the obligation to make an interest payment is incurred in whole or in part due to another agency's involvement in the payment process, then the portion of the total interest payment that is attributable to delays by that agency shall be charged to that agency's miscellaneous budget.

13. The Corporation shall solicit comments concerning the procurement policy from the members of the Corporation Board from time to time.

14. Annual Review – The Corporation shall annually review its policies and procedures.

15. Unintentional Failure to Comply - The unintentional failure to comply with the provisions of this policy shall not be grounds to void action taken or give rise to a cause of action against the Corporation or any officer thereof.

Approved and adopted this 5<sup>th</sup> day of April, 2018.