

ATTACHMENT #1

A RESOLUTION ADOPTING A PROCUREMENT POLICY

The Board of Trustees of the Incorporated Village of Mastic Beach, duly convened in regular session, does hereby resolve as follows:

WHEREAS, the Board finds that a written and adopted procurement policy is necessary to ensure that public monies are spent in a manner that avoids collusion between vendors, fosters the purchase of like goods and services at the lowest price, and protects the public treasury:

NOW, THEREFORE, BE IT RESOLVED, by the Board of Trustees:

That, the Village's procurement policy shall read as follows:

INCORPORATED VILLAGE OF MASTIC BEACH PROCUREMENT POLICY

This procurement policy is made in accordance with the provisions of §104-B of the *General Municipal Law* of the State of New York. The purpose and intent of this Policy is to provide authorization and guidelines to the Village of Mastic Beach officials, management, and staff regarding the procurement of goods and services for the Incorporated Village of Mastic Beach.

I. Statutory Authorization

All purchases for commodities, services and public works by the Village are subject to State laws that regulate municipal purchasing. In addition, certain Federal laws, and local laws of the County of Suffolk and the Town of Brookhaven govern the use of Federal, county and town contracts by the Village in some circumstances. The fundamentals for most of these regulations are as follows:

A. New York State

Thresholds for Competitive Bidding. New York State *General Municipal Law*, Article 5A, §§100-109 b, particularly New York State *General Municipal Law* §103 governs to all governmental purchases, commodities, services and technologies, including requirements for competitive procurement in accordance with specific monetary thresholds: COMMODITY expenditures in excess of \$20,000.00 and contracts for public work involving expenditures in excess of \$35,000.00. When using competitive bidding, contracts are awarded to the "lowest responsive and responsible bidder" after public advertisement for sealed bids.

Best Value Awards. In January of 2012, changes were made to New York State *General Municipal Law*, §103(1) which allows the Village to authorize, by local law, the award of certain purchase contracts, including contracts for services, subject to competitive bidding, under *General Municipal Law*, §103, on the basis of “best value” as defined in §163 of the New York State *Finance Law*. The “best value” option may be used, for example, if it is more cost efficient over time to award the good or service to other than the lowest responsible bidder or offeror; if factors such as lower cost of maintenance, durability, higher quality and longer product life can be documented.

Goods and services procured and awarded on the basis of best value are those that are proven to optimize quality, cost and efficiency, among responsive and responsible bidders/offerors. The determination shall be based on an objective analysis of clearly described and documented criteria as they apply to the rating of bids or offers. Where possible, such determination shall also be based upon and include a quantifiable analysis of the same. The criteria may include, but shall not be limited to, any or all of the following:

- Cost of maintenance
- Proximity to the end user if distance or response time is a significant term
- Durability
- Availability of replacement parts or maintenance contractors
- Longer product life
- Product performance criteria; and quality of craftsmanship.

Whenever any contract is awarded on the basis of best value instead of lowest responsible bidder, the basis for determining best value shall be thoroughly and accurately documented.

Procurement from Other Units of Government. In addition to its powers to procure goods and services under its own authority, the Village may also purchase goods and services under contracts competitively procured by other units of government.

State Contracts. *General Municipal Law*, §104 authorizes local government purchases of commodities, materials, equipment, technology, food products, supplies or services available pursuant to §163 of the State *Finance Law*, through the Office of General Services or any other department or agency of the State, and agencies of the Federal government.

Local Government Contracts. *General Municipal Law*, §103(16) allows political subdivisions “to make purchases of apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies,...as may be required by such County, political subdivision or district therein through the use of a contract let by the United States of America or any agency thereof, any State or any other County or political subdivision or district therein...” It is noted that the Town of Brookhaven has, through amendment of its own procurement policy in April 2015, authorized the use of Town of Brookhaven

contracts by other municipalities in accordance with *General Municipal Law*, §103(16), and subject to the consent of the vendor to perform on behalf of another municipality.

The use of such contracts (piggy backing) is conditioned on the contract that is to be utilized having been “let in a manner that constitutes competitive bidding consistent with state law, and made available for use by other governmental entities.” When used, purchasing through contracts obtained by other municipalities can expedite procurement and avoid the expense otherwise incumbent in the use of competitive bidding procedures. This Village procurement policy will authorize the purchase by the Village of goods, services and commodities through use of contracts made available by other municipalities and governmental organizations in accordance with *General Municipal Law*, §103(16).

Federal Contracts. The Federal GSA Cooperative Purchasing Program, authorized by statute, allows state and local governments to purchase a variety of commercial supplies (products) and services under specific GSA Schedule contracts to save time, money and meet their everyday needs and missions. The Cooperative Purchasing Program gives state and local government entities access to purchase information technology products and services, as well as law enforcement, security, first responder, and marine craft equipment, alarm and signal systems, and special-purpose clothing. This Village procurement policy will authorize the purchase by the Village of goods, services and commodities through use of contracts made available by the Federal GSA Cooperative Purchasing Program in accordance with applicable law and regulation.

II. Procedure:

In order to ensure that public monies are spent in a manner that avoids collusion between vendors, fosters the purchase of like goods and services at the lowest price, and to protect the public treasury, the State of New York requires all municipalities to follow certain procedures and to adopt policies for procuring goods and services. This procurement policy is designed to provide guidance to the Village’s employees and officials in such actions.

A. The Procurement Policy of the Village shall be established by, and shall be subject to modification by, the Board of Trustees. Day-to-day administration of the Procurement Policy and the conduct of all Village procurements and purchases of goods, services and the performance of public works shall be the responsibility of the Village Administrator or her/his designee, with the assistance of the Village Treasurer or her/his designee and the department head or her/his designee requesting the procurement. The Village Administrator shall be responsible for the preparation of all necessary purchase orders, bidding forms, bond forms, contracts, affidavits and other documents necessary to solicit bids and proposals, maintain accurate records and justify purchases and expenditures. The Village Treasurer shall be responsible to determine whether sufficient funds have been appropriated and are available to fund the purchase or expenditure requested. The department head requesting the procurement shall be responsible for obtaining all required quotations and documenting the necessity or justification of the procurement.

B. All purchases and expenditures of \$1,000.00 or more shall be approved by resolution of the Board of Trustees, upon presentation of a Village purchase order signed by the Village Administrator, the Village Treasurer and the Department Head or any of their designees, requesting the purchase or expenditure. Upon approval, the Mayor, Village Administrator, Village Treasurer and the Department Head, or any of their designees, shall be authorized to take such action as necessary to complete the purchase and execute necessary contracts.

C. Notwithstanding the provisions of Section B. above, a purchase or expenditure of not more than \$7,500.00, which is immediately necessary for the continued operation of Village services and obligations, such as for example, immediate repair of, or purchase of parts for, a disabled vehicle or piece of equipment, may be authorized without approval of the Board of Trustees, where

1. The purchase or expenditure is requested by the Department Head, or her/his designee, as immediately necessary to continue the performance of essential Village services, and
2. Approval of the Board of Trustees cannot be obtained in time to avoid substantial disruption of the provision of essential services and
3. The purchase or expenditure is made through a Village purchase order prepared in accordance with Section III of this Policy and supported by documentation of necessity, and is approved in writing by the Mayor, Village Administrator, the Village Treasurer and the Department Head, or any of their designees, requesting the purchase or expenditure.

D. Every purchase to be made must be initially reviewed to determine whether it is a purchase contract (goods, services, equipment acquisition) or public works (construction, renovation project) 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 that are purchased in the normal course of events by the Village are not subject to competitive bidding pursuant to §103 of the *General Municipal Law*:

- (1) Purchase contracts that are for twenty thousand dollars (\$20,000.00) or less and public works contracts that are for thirty-five thousand dollars (\$35,000.00) or less.
- (2) Emergency purchases.
- (3) Purchases under federal, state, county and town contracts.
- (4) Surplus and secondhand purchases from another governmental entity.

(5) Purchase contracts that are from sole source providers, a sole source provider being a provider or vendor that has been determined to be the only source of the goods or services that are to be obtained or provided and where those particular goods or services cannot be substituted by other goods or services.

E. The decision that a purchase is not subject to competitive bidding will be documented in writing by the individual requesting the purchase. Documentation may include written or verbal quotes from vendors, a memo from the requester stating how the decision was arrived at, documentation from manufacturers, contractors, suppliers or vendors, a copy of the contract indicating the source which makes the item or service exempt, a memo from the requester detailing the circumstances which led to an emergency purchase, or any other written documentation that is appropriate. If the purchase is approved or the contract is awarded by a resolution of the Board of Trustees, the resolution should state the reason why the purchase was not subject to competitive bidding if it is in excess of \$20,000.00.

III. Methods for Securing Goods and Services:

A. Goods and services will generally be obtained by authorized use of Village credit card or written quotations documented through use of a Village purchase order, except in the following circumstances, each of which shall be authorized and documented through forms prepared by the Village Administrator:

- (1) Purchase contracts over twenty thousand dollars (\$20,000.00) and public works contracts over thirty-five thousand dollars (\$35,000.00) (which are subject to competitive bidding).
- (2) Goods purchased from agencies for the blind or severely handicapped pursuant to §175-b of the State *Finance Law*.
- (3) Goods purchased from correctional institutions pursuant to §186 of the *Correction Law*.
- (4) Purchases under state contracts pursuant to §104 of the *General Municipal Law*; under county contracts pursuant to §103, Subdivision 3, of the *General Municipal Law*; or purchases from other governmental agencies under §103 Subdivision 16 of the *General Municipal Law*, or other statutory authorization.
- (5) Emergency purchases.
- (6) Purchases from a sole source provider.

B. The following method of purchase will be used when required by this chapter in order to achieve the highest savings:

- (1) Purchase contracts.

Estimated Amount of Purchase Contract	Method
\$0 to \$499.99	Authorized use of Village credit card or one written quote documented through Village purchase order.
\$500.00 to \$19,999.99	Three written quotes documented through Village purchase order

(2) Public works contracts.

Estimated Amount of Public Works Contract	Method
\$0.00 to 499.99	One quote Authorized use of Village credit card, or one written quote documented through Village purchase order
\$500.00 to \$34,999.99	Three written quotes documented through Village purchase order

C. A good-faith effort shall be made to obtain at least the required number of proposals or quotations. If the requester is unable to obtain the required number of proposals or quotations, he will document the attempt made at obtaining the proposals. The failure to obtain the proposals shall not be a bar to the consideration of received proposals by the Board of Trustees.

IV. Documentation required:

A. Documentation is required of each action taken in connection with each procurement.

B. Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible bidder/proposer. This documentation will include an explanation of how the award will achieve savings, and how any bidder/proposer was deemed to be a non-responsible entity. A determination that the requestor is not responsible shall made by the Board of Trustees.

V. Bids and Proposals:

A. All requests for bids and proposals shall be made by the Village Clerk/Administrator with the assistance of the Village Treasurer and the Department

Head or their designees, requesting the procurement. All proposals shall require a response by a specified date and time and late proposals may be rejected and not considered. In the case where municipal bids pursuant to Sections 103 or 104 of the *General Municipal Law* are solicited, late bids will not be considered for an award of bid, but may be reviewed by the Board of Trustees in their deliberations. The Village may reject any and all quotes. All quotes shall be submitted to the Clerk in a sealed envelope. On the face of the envelope there shall be written the person or entity submitting the quote and the proposal to which the quote is in response. All quotes shall remain in the sealed envelope until the time and date specified in the proposal.

B. No officer or employee of the Village other than the Village Clerk/Administrator, or her/his designee may accept sealed bids made under municipal bidding rules.

C. Upon authorization of the Board of Trustees, the Village Clerk/Administrator, or her/his designee, may solicit requests for qualifications of providers of goods or services, and shall thereafter establish and maintain a list of individuals and entities from which proposals may be solicited to be known as the Village Procurement Guideline Solicitation List and whenever proposals are solicited pursuant to this chapter, the Village Clerk/Administrator, or her/his designee, shall endeavor to solicit all vendors on the approved Village Procurement Guideline Solicitation List who appear to meet the requirements of the work to be obtained.

D. The Village Procurement Guideline Solicitation List shall contain the name, address, telephone number and area of expertise of any person or entity who notifies the Village, in writing, to the attention of the Village Clerk/Administrator, or her/his designee, that the person or entity desires to be included upon the list. Such writing shall set forth the name, address, telephone number and area of expertise with respect to which the person or entity desires to receive proposals from the Village.

E. Whenever proposals are sought by the Village pursuant to these procurement guidelines and the work or goods to be procured fall within an area of expertise identified on the Village Procurement Guideline Solicitation List, then in that event, every person or entity on the list with expertise in the area for which proposals are sought may be invited to submit a proposal. Nothing herein shall prohibit the Village from soliciting proposals from persons or entities not on the list.

VI. Exceptions:

Pursuant to *General Municipal Law* §104-b, Subdivision 2f, the procurement policy may contain circumstances when, or types of procurement 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 Mastic Beach to solicit quotations or document the basis for not accepting the lowest bid:

A. Professional services or services requiring special or technical skill, training or expertise except that the Village of Mastic Beach recognizes that, while professional services are exempt from competitive bidding requirements, in order to insure that the Village receives the best value when procuring these services the Village Clerk/Administrator, or her/his designee, will, whenever practicable, seek additional quotes for these services.

(1) The individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, and integrity. 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 Village of Mastic Beach 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.
- (c) Whether the services require a personal relationship of trust or confidence between the individual to be retained and municipal officials.

(2) Professional or technical services shall include but not be limited to the following: legal services; the services of a physician; the technical services of an engineering, architectural or planning firm engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management 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 prepackaged software.

B. Emergency purchases pursuant to §103, Subdivision 4, of the *General Municipal Law*. Due to the nature of this exception, these goods and services must be purchased immediately. Emergency is defined as an urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk. A failure to properly and timely plan in advance for a procurement, which then results in a situation in which normal procurement practices cannot be followed, will not constitute an emergency. This section does not preclude alternate proposals if time permits.

C. Purchases of surplus and secondhand goods from any source. If alternate proposals are required, the Village of Mastic Beach is precluded from purchasing surplus and secondhand goods at auctions or through specific advertised sources where the best prices of used goods and a lower price may indicate an older product.

D. Goods or services under five hundred dollars (\$500.00). The time and documentation required to purchase through this chapter 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 minimus contracts would be awarded based on favoritism.

E. Sole source purchases and contracts: Where competition would otherwise be required, but is not feasible due to the sole source, single source or emergency nature of a commodity or service, the Village must be able to justify and document the selection of the vendor and establish the reasonableness of the price. In accordance with the State *Finance Law*, exceptions to the general requirement for competitive selection shall only be made under unusual circumstances. The Village must maintain written justification supporting the sole source, single source or emergency determination.

VII. Purchase Orders:

A. Purchase orders must be obtained for all purchases of physical items and services over \$1,000.00.

B. Purchase orders must be approved in writing prior to the invoice date.

C. Purchase orders must be signed by: (1) the Department Head of the Department, or her/his designee, requesting the purchase; (2) the Treasurer, or her/his designee, as an indication that the funds necessary for the purchase are available as a budget matter, and; (3) the Village Clerk/Administrator, or her/his designee.

D. Expenditures for utility, telephone and professional services are exempt from purchase orders.

VIII. Requests for Bids and Proposals:

A. Requests for bids and proposals are required for all purchase contracts in excess of twenty thousand dollars (\$20,000.00) and public works contracts in excess of thirty-five thousand dollars (\$35,000.00), and are encouraged for all other contracts and purchases where practicable.

B. All requests for bids and proposals shall be in standard Village form, shall comply with the New York State *General Municipal Law* as to minimum or substantive requirements, and shall contain the following language:

“The Village of Mastic Beach is an equal opportunity employer and does not discriminate on the basis of race, color, creed, ancestry, disability or handicap, marital/financial status, military status, religion, sex, sexual orientation, age or national origin with respect to employment or any employment related matter and the Village of

Mastic Beach requires that all contractors participating in contracts for public work in the Village of Mastic Beach and all subcontractors of those contractors comply with that same requirement and evidence that compliance to the Village of Mastic Beach by providing an affidavit to that effect. The Village of Mastic Beach encourages bids for public works and other contracts with the Village of Mastic Beach and subcontractors of the bidders for those contracts by minority and women owned contractors and entities and the Village of Mastic Beach will solicit bids and contracts from such entities with respect to the public work noticed herein.”

Board Policy Adopted: 6/9/2015

Board Policy Amended and Adopted: 4/25/2016