

PROCUREMENT POLICY OF THE ISLIP RESOURCE RECOVERY AGENCY

This Procurement Policy is adopted by the Town Board of the Town of Islip, sitting *ex officio* as the Board of Directors of the Islip Resource Recovery Agency, to govern the purchase of goods and services necessary for the operation of the Agency.

GENERAL POLICY

All goods and services ordinarily required for the operation of the Agency shall be procured in accordance with the procurement procedures established and adopted from time to time by the Town Board and applicable to the Town Department of Environmental Control, unless otherwise established by resolution of the Agency Board. For purposes of this policy the President of the Agency shall be authorized to do all things authorized to be done with respect to procurement by the Commissioner of the Department of Environmental Control. Nothing in this policy shall be construed to alter the responsibilities of the Agency as a public authority organized pursuant to Title 13C of the Public Authorities Law of the State of New York.

SPECIAL POLICY FOR PROCUREMENT OF RECYCLING COMMODITIES CONTRACTS.

Pursuant to law and agreements with the Town of Islip, the Agency is responsible to receive, process and market the saleable commodities of recyclable materials, including but not limited to paper, metals, plastics, glass, electronics, yard wastes and various grades thereof, as designated from time to time by the Town Board of the Town of Islip. Where commodities received are not marketable, the Agency is responsible for the disposition of such materials as waste, or through markets demanding negative pricing on a temporary or indefinite basis.

The provisions of General Municipal Law (GML) §103 are available, but not required, in the making of recyclables contracts by municipalities and public authorities, as found in two recent decisions of the Court of Appeals and the Appellate Division 3d Dept. In *Omni Recycling of Westbury v. Town of Oyster Bay* 11 N.Y. 3d 868 (2008) the Court of Appeals held that a contract for the sale of recyclables by the Town of Oyster Bay was not subject to the competitive bidding procedures of GML 103, but could be awarded by Request for Proposals authorized by internal procedures adopted under GML 104(b). In *AAA Carting v. Town of Stony Point* 74 N.Y.S.3d 276 (App Div 3d Dept 2018) the court held that a public authority is subject to its own authorizing legislation and policies and was not required to adhere to the provisions of GML §103 in the procurement of contracts for the sale or disposition of recyclables. The court held that the Rockland County Resource Recovery Agency could procure recyclables contracts for materials collected on behalf of the Town of Stony Point and delivered to the Authority for processing and sale without regard to GML 103 or other bidding laws applicable to municipalities.

The objectives of the Agency's recyclables marketing policy are to

- i) Improve and maintain public confidence in the Town's recycling program through reliable movement of recyclable commodities to market;
- ii) Increase and maintain diversion of recyclable commodities from the balance of the waste stream;
- iii) Increase the market value of recyclable commodities and secure the revenues derived therefrom for the benefit of the public.

In order to accomplish these objectives, the Agency is hereby authorized to procure contracts for the sale and disposition of recyclables through the following means:

- By Agreements solicited, in the discretion of the President, through sealed competitive bids, written requests for proposals, two or more written quotations when available, or two or more verbal quotations when available, confirmed by standard form agreements or letter agreements.

It is expressly contemplated in this policy that changes in recyclable commodity markets, including supply, demand, prices, standards, foreign and domestic trade policies, transportation factors and the number and capability of available vendors may be rapid, and that in order to pursue the objectives of the Agency in the recyclables commodity markets set forth above, the President should be, and hereby is, authorized to enter into the following types of agreements without prior approval of the Agency Board, subject to the oversight and reporting provisions set forth below:

- By Agreements with more than one vendor for a commodity in a volatile market when more than one market outlet for the commodity is deemed necessary by the President, provided that the Agency shall retain the power, at the discretion of the President, to increase or decrease material volumes to different vendors to take advantage of market conditions and prices, and to induce competition and performance, including timely payment.
- By Agreements containing provisions for fixed pricing, floor pricing, index pricing, batch pricing or any combination thereof, as determined at the discretion of the President.
- By Agreements containing provisions authorizing the Agency to establish the length of the term of the Agreement and to extend, renew or terminate the Agreement at the discretion of the President.
- By Agreements providing for the disposition of recyclable materials when no positive market price is available, provided that i) such Agreement contemplates additional processing and ultimate re-marketing of the subject commodity, ii) that the cost of such disposition is not greater than the cost to the Agency to dispose of such commodity as municipal solid waste, and iii) that any such Agreement with a base term of one year or more shall be subject to the prior approval of the Agency Board.

OVERSIGHT AND REPORTING PROVISIONS

1. The President shall deliver to the Chair of the Agency Board a regular monthly vendor report setting forth all contracts in effect for the sale or disposition of all recyclable commodities. Such report shall identify the commodity, each active contract for the commodity, the vendor, the unit price for the commodity in each contract, the quantity delivered to the vendor in the previous month, the net revenue or cost of the transactions under the contract in the previous month and the status of the accounts receivable for the vendor to date.
2. The report shall also contain a summary of the overall performance of the Agency's commodity marketing efforts on a year to date basis. The report shall contain a summary of the recyclables received by the Agency from the Town in the previous month (fiber and commingled container), the quantities of each commodity marketed through existing contracts in the previous month (out-going materials), the net revenues received from the sale or disposition of recyclable commodities in the previous month, and the total accounts receivable from the sale or disposition of recyclable commodities from all vendors.
3. The President shall provide to the Chair of the Agency Board prompt notice of significant changes in the market for any commodity, including termination notices, vendor failure to perform, price changes and other disruptions to marketing of materials.

All such Agreements made or performed pursuant to this policy may be submitted to the Agency Board for approval, ratification, modification or rejection upon the direction of the Chair of the Agency Board.