

# Development Authority of the North Country Policy for the Sale and Reporting of Bonds



**Subject: Bond Sale Policy**

**Adopted: August 28, 2014**

**Resolution: 2014-08-04**

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## **ARTICLE I – STATEMENT OF PURPOSE**

- 1.1 This Policy is adopted in compliance with the requirements of Section 2711 of Public Authorities Law and is intended to set forth the Development Authority of the North Country's policies for the sale and reporting of bonds issued by the Development Authority of the North Country.

## **ARTICLE II – PROCUREMENT OF SERVICES**

- 2.1 It is the Authority's determination that, unless otherwise excepted by law or resolution of the Authority, the vendors of such services as may be required to complete debt issuance transaction must be selected subject to the provisions of the Procurement Policy of the Development Authority of the North Country.
- 2.2 For the purposes of this article, the services required to complete a debt issuance may include but not be limited to, Attorney or Bond Counsel, Financial Advisor, Consultant Engineer, Bondholder Trustee, Insurer, Insurance Carrier, Insurance Agent, and Underwriter.
- 2.3 Nothing in this Policy shall be deemed to require the Authority to initiate a special separate selection process for the procurement of any services in connection with the issuance of debt if a vendor has been previously selected to provide such services generally to the Authority. This is provided that the selection of such vendor was made in full compliance with the Procurement Policy of the Authority.

## **ARTICLE III – DEFINITION OF TERMS**

- 3.1 Definitions - The following terms shall, for purpose of this Policy, have the following meanings unless the context shall clearly indicate some other meaning:

"Authority" shall mean the Development Authority of the North Country

"Board" shall mean the Board of Directors of the Development Authority of the North Country.

"Debt" shall mean a contract of indebtedness evidenced or secured by a bond, or note or other written instrument executed by the Authority to the credit of another party.

"Designee" shall mean a person designated by the Executive Director to act on their behalf.

“Executive Director” shall mean the Executive Director of the Authority.

“Minority Business Enterprise” shall have the meaning set forth in the Procurement Policy.

“Women-Owned Business Enterprise” shall have the meaning set forth in the Procurement Policy.

“Procurement Policy” shall mean the Policy of the Development Authority of the North Country establishing the Authority’s procedures for the use, award, monitoring and reporting of Procurement Contracts published under the Development Authority of the North Country Governance Policies.

#### **ARTICLE IV – SELECTION OF METHOD OF SALE**

4.1 The Board of Directors of the Authority shall authorize the issuance of Authority Bonds. Upon authorization of issuance of such Bonds, the Board shall select a method of sale from among the following:

- (a) Public Competitive Sale. When a particular debt issue is standardized and routine such that the specifics of the issue can be satisfactorily described in a public notice to bidders and for which the most important factor is the ultimate price of the issue, bids may be solicited from the public. The sale of bonds shall be advertised in a manner determined by the Executive Director, or a designee, to provide adequate notice for the most practical and efficient sale. In the case of a Public Competitive Sale, the debt is awarded to the underwriter who submits the lowest bid as a result of a competitive procurement process.
- (b) Public Negotiated Sale. Bonds or notes may be sold at public negotiated sale when the issue represents a new financing method; includes complex security, structuring, or other factors that require extensive explanation to potential purchasers of the bonds; or has such other features as require extensive pre-marketing efforts in order to achieve a cost-effective sale. In addition, the use of public negotiated sale is appropriate during periods of instability or uncertainty in the financial markets. In the case of a public negotiated sale, managing underwriters shall be selected in accordance with Article V of this Policy. Such Managing Underwriter shall negotiate the terms of the debt and underwriters commission. The Authority is required to get the NYS Comptroller’s approval to conduct a Public Negotiated Sale.
- (c) Private Placement. Where the size, complexity or risk of a debt issue would make it impractical or not cost-effective to offer the bonds for sale to more than a limited number of ultimate purchasers, the Authority may select a private placement sale, with the selection of the placement agent (if any) for the bonds to be made in accordance with Article V of this Policy. The Authority is required to get the NYS Comptroller’s approval to conduct a Private Placement sale.

## **ARTICLE V – SPECIAL PROVISIONS CONCERNING THE SELECTION OF MANAGING UNDERWRITERS AND PRIVATE PLACEMENT AGENTS**

- 5.1 Methods of Selecting Underwriters and Private Placement Agents. In the event that the Board authorizes the issuance of debt by a Public Negotiated Sale or Private Placement, the Board shall also select the Managing Underwriter or Private Placement Agents for the sale of such bonds.

The following general procedures shall be followed:

- (a) In order to assure the widest possible solicitation of qualified underwriters or agents, the Executive Director, or a designee, shall issue a Request for Proposals from interested investment banking firms and/or agents with experience in the structuring or structuring and marketing of tax-exempt debt instruments. A notice that Proposals are being sought shall be printed in the State Contract Reporter.

The Board Chairman shall establish an Evaluation Committee and appoint Board Members. The Committee shall evaluate the responses to the Authority's Request for Proposals using appropriate criteria as identified in the Request for Proposals. The Committee shall then make recommendations in writing as to (1) which firms are qualified to underwrite or place the Authority's debt and (2) which among those qualified it deems to be the most appropriate, on the basis of proposals, to underwrite or place the specific debt issue. The Committee may recommend a single underwriter or agent, or a team of participants with one party designated as the managing underwriter or managing agent.

The criteria used in evaluating each respondent may include, but need not be limited to, (1) the firm's price proposal, (2) the firm's financial strength or net capital, (3) the firm's familiarity and experience in underwriting bond issuances with credit structures and other characteristics comparable to those of the Authority's bond issue, (4) the firm's presence in New York, (5) the firm's ability to support the Authority bond issues, (6) the firm's ethical standards and practices, and (7) the firm's compliance with the Minority and Women Owned Business Enterprises and equal opportunity/affirmative action policies of the Authority.

- (b) The final selection of Underwriters, Managing Underwriters or Private Placement Agents shall be made by the Board of Directors, who shall take into account the following factors: (1) the recommendations of the Evaluation Committee; (2) responses to a Request for Proposals, including price; (3) support provided to the Authority through general marketing of the Authority bonds and/or assistance in the development of new financial programs; (4) an evaluation of any conflict of interest, impropriety or appearance of impropriety; and (5) such other factors that are deemed relevant to the particular bond issue.
- (c) It is the policy of the Authority to expect high ethical standards from its underwriters. The Executive Director, or any participant in the process, shall notify the Board if he or she has reason to believe that any firm providing such services has engaged in conduct

that may be inconsistent with the Authority's best interests, and shall indicate the reason therefore.

- 5.2 Promotion of Minority and Women Owned Business Enterprises. It is the goal of the Authority to, among other things, promote and assist participation of Minority and Women Owned Business Enterprises in the underwriting of the Authority's bonds. This goal shall be considered in the selection of underwriters and private placement agents as described in Subsection 5.1 above.

It is also the Authority's goal to select as underwriter or private placement agents those investment banking firms that have evidenced compliance with the laws of the State of New York prohibiting discrimination in employment. The Authority recognizes that this goal may be achieved by selecting as managing underwriters or private placement agents those firms that have demonstrated that they do not discriminate in employment. Accordingly, the Executive Director, or designee, shall request from investment banking firms such information on employment policies and practices as is necessary to assess such firms' compliance with relevant laws and policies on equal employment opportunity and affirmative action.

- 5.3 Promotion of New York State Business Enterprises. It is also the goal of the Authority to, among other things, promote and assist participation by New York State Business Enterprises in the underwriting of the Authority's bonds. This goal shall be considered in the selection of managing underwriters and private placement agents as described in Subsection 5.1 above.

#### **ARTICLE VI - REPORTS ON BOND SALES**

- 6.1 Annual Report. The Authority shall annually prepare and approve a bond sale report which shall include the Authority's Guideline for the Sale and Reporting of Bonds and Notes, amendments to such Guidelines since the last Authority report, and if necessary, an explanation of the Guidelines and the results of any sales including, but not limited to, the underwriter's compensation and net interest costs of bonds sold during the fiscal year. Such bond sale report shall also identify which of the Authority's bond sales were conducted as public competitive sale, public negotiated sale, or private placement.

Copies of the bond sale report shall be available to the public upon reasonable request at the Authority's administrative offices. The bond sale report shall be posted on the Authority's website.

#### **ARTICLE VII – New York STATE COST RECOVERY**

- 7.1 Pursuant to Section 2976 of Public Authorities Law, public benefit corporations which issue bonds, notes or other obligations shall pay to the state of New York a bond issuance charge upon the issuance of such bonds in an amount determined pursuant to subdivision two of Section 2976 of Public Authorities Law. As a New York State Public Benefit Corporation, the Development Authority of the North County shall compute and pay such bond issuance charges to the State of New York as prescribed in Section 2976 of Public Authorities Law.

## **ARTICLE VIII – MISCELLANEOUS PROVISIONS**

- 8.1 Powers of Amendment. Any modification or amendment of this Policy may be made by a Resolution adopted at any duly constituted Board meeting; provided, however, that no such modification or amendment shall abrogate the rights and duties of existing Authority contracts, the terms of which were established pursuant to this Policy.
- 8.2 No Recourse Under this Policy. No provision of this Policy shall be the basis for any claim based on this Policy against any Board Member, Officer or Employee of the Authority or the Authority itself. Furthermore, notwithstanding the provisions of this Policy, once the Board has authorized the issuance of debt, this Policy shall not be construed to restrict in any way the issuance of such debt.
- 8.3 Effect upon Existing Authority Contracts. This Policy shall not abrogate the rights and duties of Authority contracts with third parties executed prior to the effective date of this Policy.