

**STATEMENT FROM THE VILLAGE OF AIRMONT REGARDING SAM/DASNY
GRANT ISSUES 2022:**

December 19, 2022

RE: Project ID No. 13071 (Renovations and Upgrades to the Village Hall including the Purchase of Office Furniture)

In 2022, the Dormitory Authority of the State of New York (“DANY”) had made inquiries with the Village regarding certain purchases made pursuant to a Village DASNY grant in the amount of approximately \$250,000 that had been awarded to the Village for the renovation and upgrade of the Village Hall, including acquisition of office furniture. We are pleased to inform our residents that the issues and have been resolved and the Village has received all funds due under the grant. In the interest of disclosure and open government, the Village is providing this summary of the inquires and the Village’s response. We are also please to confirm that the review of the procurement issues did not result in identification of any type of favoritism, kickbacks or similar illegal or similar improper activity in the procurement process. The issues identified arose from either policy failure or errors in the Village’s previously enacted procurement local law which has last been amended in 2017.

Procurement Requirements

In expending grant funds, the Village is required to comply with state law and/or local procurement laws/policies where purchases and public works projects exceed state statutory thresholds (\$20,000 for purchases and \$35,000 for public works projects). For amounts expended that are less than that amount, the Village must comply with its local procurement policies. In response to the inquires from DASNY, the Village retained special legal counsel, Brian D. Nugent¹ to review these issues and assist in responding to the DASNY inquiries. Mr. Nugent met with DASNY representatives along with the Village Clerk who had facilitated the purchases pursuant to the grant. Mr. Nugent and the Village Clerk worked cooperatively with representatives of DASNY to review all procurements under the grant and to identify any procurements that were not compliant with state and/or local policies. At least one large procurement was identified that should have been, but was not, formally bid. In addition, there were additional procurements under the local procurement policy where a sufficient number of quotes were not obtained by the Village.² The procurements at issue were approved by the Village Board, but sufficient

¹ Mr. Nugent (Feerick Nugent MacCartney, PLLC) has extensive experience in representing local governments in the Hudson Valley and had been recommended by representatives of other local governments in Rockland County.

² One of the deficiencies in the Village procurement local law identified was the absence of a required number of quotes to be obtained. The code states that a “good faith effort shall be made to obtain the required number of proposals or quotations” but the Code never identifies how many quotes should be obtained. The chart in the Code only indicates written/fax quotations and/or written requests for proposals, but does not indicate a minimum number of quotations or proposals for any procurement threshold.

documentary backup was not presented to the Village Board for complete and proper review of such procurements.

Mr. Nugent determined that, in effecting certain procurements under the grant, the Village did not utilize formal bidding or solicit requests for proposals where such procedures would have been required for certain purchases and public work under the grant. In addition, some Procurements were not in compliance with the Village's local policy since the policy itself lacked specificity as the required number of quotes or proposals to be obtained. See Airmont Village Code, Chapter A-217.³

Mr. Nugent also identified that the Chapter A217 (Procurement) in the Village Code had inaccurate and inconsistent provisions concerning the state thresholds. The Village Code incorrectly identified a bidding threshold of \$70,999. He advised that the local law also contained other deficiencies and recommended amendment of the Village's local law on procurement. Also, contrary to guidance that the Village Clerk had previously received, Mr. Nugent confirmed that all procurements exceeding state thresholds amounts must be achieved through formal bidding processes or formal requests for proposal ("RFP"), regardless of the source of the funds being expended. The only relevant exceptions would be goods and services obtained via State Contracts through the NYS Office of Governmental Services ("OGS") or via "piggybacking" (e.g., utilizing another government contract that was properly bid) which are permissible methods that do not require formal procurement processes since such government contracts undergo a formal procurement process prior to being made available to other government agencies.

With respect to the vendors that had been chosen for Village work under the grant, it was determined that the Village Clerk obtained the vendor/contractor names from a Rockland County website that contains a database of vendors/contractors that are licensed in the County of Rockland.

Review by Village and DASNY

All requested records were provided by the Village to DASNY for review and a meeting was arranged with DASNY representatives at Village Hall to review the issues and the documents. On Thursday, September 29, 2022, the Village Clerk and Mr. Nugent met with Tara Miner (Director DASNY Office of Professional Integrity) and Investigator Jorge Gomez. During the meeting, all relevant documents were made available to DASNY for review and responses were provided to their inquiries. During the meeting, no indications of any type of favoritism, kickbacks or similar illegal activity with respect to the procurements was identified. Further, there was no indication that the prices obtained for the procurements were unfair or otherwise detrimental to the Village and its taxpayers.

Corrective Action

³ The Village's procurement policy was in the form of a local law and is available at <https://ecode360.com/6592164>.

Despite the absence of any indication of favoritism or similar improper conduct in relation to the procurements, DASNY and the Village representatives agreed that remedial actions should be taken and documented to ensure that the irregularities involved in the procurements are not likely to repeat in the future. At the time of the September 22, 2022 meeting with DASNY, the amendment of the Village procurement local law/policy was already in progress based on Mr. Nugent's recommendation and a public hearing had already been scheduled concerning those amendments. The local law amending the procurement chapter was adopted and became effective on October 13, 2022. The Village's plan of remedial action includes:

1) Amendment of the Village Procurement Law and Policy.⁴

a. Chapter A-217 (Procurement Amended). The Village has removed the specific thresholds (state and local) from the Village Code and instead incorporated those thresholds into a Procurement Policy to be adopted annually by Village Resolution.

b. The Village Procurement Policy may be amended by resolution to correct and improve the procurement process in accordance with the best practices. By adopting the specific of the procurement policy by resolution, the Village can address any issues more expediently compared to the local law process that would require publications and public hearing each time the policy needed to be amended. There is no legal requirement that procurement policies be adopted by local law and including provisions that are too specific in a local law makes the process of amendment cumbersome. The only benefits to a local law under such circumstances is the presumption of constitutionality that accompanies a local law, but procurement matters rarely involve constitutional issues. In addition, the amendment of the authorized purchasers can be easily updated when the procurement policy is adopted by resolution.

c. Corrections to Procurement Policy. The Village Code, Chapter A217 had the deficiencies that were addressed in the amendment, including:

i. Chapter A217-1(A) stated the correct thresholds under NYS General Municipal Law § 103, however, the threshold amounts under A217-3 (Methods of Purchase) were not consistent with A217-1(A).

ii. Under A217-3(A)(2), the Code indicated that the threshold for public works contracts was \$70,999. This threshold was clearly contrary to A217-1(A) and also contrary to General Municipal Law § 103 which sets the threshold for public works contracts at \$35,000. See Gen. Mun. § 103. It appears that the \$70,999 was a typo in the Village's local law and should have been \$34,999. Section A217-3(A)(2)

⁴ This local law amendment and procurement policy has already been adopted on October 3, 2022.

also incorrectly refers to “Estimate Amount of Purchase Contract” where it should have said “Estimated Amount of Public Works Contract.”

- iii. With respect to the Methods of Purchase under A217-3(A)(1) and (2), there was no indication of the number of quotations or proposal that should be obtained for the various thresholds. Rather, the provisions just state “Verbal Quotations,” “Written/fax quotations” or “written requests for proposals.” Underneath that section, the Code states that “[a] good-faith effort shall be made to obtain **the required number of proposals** or quotations.” See Village Code A217(3)(B). However, the bolded language was rendered meaningless as there was no number of quotes or proposals included in the local law to inform the reader how many quotes or proposals should be obtained. The revised procurement policy provides such numbers to guide purchasers in determining the number of quotes or proposals that are required for each level of procurement.
- iv. The Village has added authorized purchasers into the Procurement Policy identifying, by name and title, those personnel responsible for purchasing the various departments.

2) **Village Board Approval of Procurements:** The Village intends to amend its process to require that procurement submissions to the Village Board include either a summary of the quotes/proposals received supporting the procurement decision and/or copies of the written quotes received, when required. The aim is to ensure that the Village Board knows what process was followed prior to approving a purchase where the policy requires proposals and/or quotes.

3) **Legal Review of Procurements.** In the case of procurements subject to the GML thresholds, the Village authorized purchasers shall consult with legal counsel and request an opinion on the proper method of procurement (e.g. RFP, bid, RFQ, etc.) prior to proceeding with any purchases. In addition, where any authorized purchaser is not sure of how to properly document a procurement, regardless of whether subject to GML thresholds, legal counsel shall be consulted prior to the purchase.

4) **Procurement Guide: Each authorized Village purchaser shall be provided with a copy of the** New York Conference of Mayors guide: “Purchasing Goods and Services: A Guide to Competitive Bidding and Procurement” as an educational document and a reference, as needed in carrying out their responsibilities for procurement.

We are pleased that the Village was able to secure the significant amount of grant funds in order to renovate and improve our Village Hall for the benefit of all residents and without cost to our residents.