

## Chapter 40

### Procurement Policy

#### § 40-1 Determination of purchases subject to competitive bidding.

Every prospective purchase of goods and services shall be evaluated to determine the applicability of GML § 103. Every Town officer, board, department head or other personnel with the requisite purchasing authority (purchaser) shall estimate the cumulative amount of the items of supply or equipment needed in a given year. That estimate shall include the canvass of other Town departments and past history to determine the likely yearly value of the commodity to be acquired. The information gathered and conclusions reached shall be documented and kept with the file or other documentation supporting the purchase activity.

#### § 40-2 Purchases governed by General Municipal Law § 103.

All contracts for public work and all purchase contracts governed by General Municipal Law § 103 shall comply therewith.

#### § 40-3 Purchases not governed by General Municipal Law § 103.

Goods and services which are not governed by General Municipal Law § 103 must be procured in a manner so as to assure the prudent and economical use of public moneys in the best interests of the taxpayers of the Town, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud, and corruption. To further these objectives, all procurements of goods and services which are not governed by General Municipal Law § 103 shall comply with the applicable portions of this section, except where otherwise provided in this chapter.

A. Purchase contracts not governed by General Municipal Law § 103 shall be secured as follows:

(1) Contracts not governed by General Municipal Law § 103 involving expenditures greater than ~~\$5~~10,000 shall require a written request for proposals (RFP) and written/fax quotes from at least three vendors.

(2) Contracts not governed by General Municipal Law § 103 involving expenditures of ~~\$5~~10,000 or less, but greater than ~~\$1~~5,000 shall require an oral request for proposals and oral/fax quotes from at least two vendors.

(3) Contracts not governed by General Municipal Law § 103 involving expenditures of ~~\$1~~5,000 or less are left to the discretion of the purchaser.

B. Public works contracts not governed by General Municipal Law § 103 shall be secured as follows:

(1) Contracts not governed by General Municipal Law § 103 involving expenditures greater than \$10,000 shall require a written request for proposals (RFP) and written/fax quotes from at least three contractors.

(2) Contracts not governed by General Municipal Law § 103 involving expenditures of \$10,000 or less, but greater than \$15,000 shall require a written request for proposals (RFP) and written/fax quotes from at least two contractors.

(3) Contracts not governed by General Municipal Law § 103 involving expenditures of \$15,000 or less are left to the discretion of the purchaser.

C. Any written RFP required under this section shall describe, as applicable, the desired goods and/or services to be provided, the quantity thereof, and the particulars of delivery. The purchaser shall compile a list of all vendors from whom written/fax/oral quotes have been requested and the written/fax/oral quotes offered. All information gathered in complying with the procedures of this guideline shall be preserved and filed with the documentation supporting the subsequent purchase or public works contract.

#### **§ 40-4 Documenting proposal requests.**

A good-faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or quotations, the purchaser shall document the attempt made at obtaining the proposals. In no event shall the inability to obtain the proposals or quotes be a bar to the procurement.

#### **§ 40-5 Awarding contracts to other than lowest responsible bidder.**

The purchaser shall prepare a written justification providing reasons why it is in the best interest of the Town and its taxpayers to make an award to other than the low bidder. If a bidder is not deemed responsible, facts supporting that judgment shall also be documented and filed with the record supporting the procurements.

##### **§ 40-5.1 Awarding contracts for best value.**

General Municipal Law § 103 provides that purchase contracts, including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law, may be awarded on the basis of best value. "Best value" means the basis for awarding contracts for services to the bidder which optimizes quality, cost and efficiency, among responsive and responsible bidders. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for bidders that are small businesses, certified minority- or women-owned business enterprises (as defined in Executive Law § 310) or service-disabled veteran-owned business enterprises (as defined in Executive Law § 369-h) to be used in evaluation of offers for awarding of contracts for services.

A. Where the basis for award is the best value offer, documentation in the procurement record shall, where practicable, include a quantification of the application of the criteria to the rating of proposals and the evaluation results, or, where not practicable, such other justification which demonstrates that best value will be achieved.

B. The determination to award a contract on the basis of best value shall be made by the purchaser. The purchaser shall use a cost benefit analysis or other similar process to demonstrate quantifiable value or

savings from nonprice factors that offset the price differential of lower price offers. Nonprice factors may include, but are not limited to, the following:

- (1) Reliability of a product;
- (2) Efficiency of operation;
- (3) Difficulty or ease of maintenance;
- (4) Useful lifespan;
- (5) Ability to meet needs regarding timeliness of performance; and/or
- (6) Experience of a service provider with similar contracts.

C. The purchaser shall select a formal competitive procurement process in accordance with law and this procurement policy, and document its determination in the procurement record. The process shall include, but is not limited to, a clear statement of need; a description of the required specifications governing performance and related factors; a reasonable process for ensuring a competitive field; a fair and equal opportunity for bidders to submit responsive offers; and a balanced and fair method of award.

D. The solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted. Where appropriate, the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by the Town Board in its determination of best value.

#### **§ 40-6           Circumstances not requiring solicitation of proposals.**

A. Except as otherwise directed by the Town Board, no solicitation of written proposals or quotations under § 40-3 shall be required under the following circumstances:

- (1) Emergencies.
- (2) Sole source situations.
- (3) Goods purchased from agencies for the blind or severely handicapped.
- (4) Goods purchased from correctional facilities.
- (5) Goods purchased from another governmental agency, including but not limited to state or county bid.
- (6) Goods purchased at an auction.
- (7) Goods purchased for \$~~15~~,000 or less.
- (8) Public works contracts for \$~~15~~,000 or less.

B. Contracts for the repair or maintenance of Highway Department equipment. Section 40-~~3B3~~ of this chapter shall not apply to contracts for the repair or maintenance of Highway Department equipment that are not otherwise governed by General Municipal Law § 103 where obtaining written solicitations or proposals is impracticable or is not cost-effective due to the need to transport the subject equipment to various potential vendors in order to obtain such written solicitations or proposals.

## **§ 40-7 Option to pursue competitive bids.**

No portion of this chapter shall be construed as preventing the competitive bidding for purchase contracts or public works contracts in accordance with the terms and procedures set forth therefor in General Municipal Law § 103 where such contracts are otherwise exempt or not subject to such competitive bidding requirements, if so desired by the Town Board.

## **§ 40-8 Exceptions.**

The solicitation of alternative proposals or quotations will not be required in the best interest of the municipality in the following circumstances, where proper 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:

A. Professional services or services requiring special or technical skill, training or expertise. The individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity and moral worth.

(1) In determining whether a service shall fit into this category, the Town Board 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 between the individual and municipal officials.

(2) Professional and technical services shall include but not be limited to the following:

(a) Service of an attorney.

(b) Services of a physician.

(c) Technical services of an engineer or architect engaged to prepare plans, maps and estimates.

(d) Securing insurance coverage and/or service of an insurance broker.

(e) Services of a certified public accountant.

(f) Investment management services.

(g) Printing services involving extensive writing, editing or artwork.

(h) Management of municipally owned property.

(i) 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 or services must be purchased immediately, and delay in order to

seek alternate proposals may threaten life, health, safety or welfare of the residents. This section does not preclude alternate proposals if time permits.

C. Purchases of surplus and second-hand goods from any source. If alternate proposals are required, the Town is precluded from purchasing surplus and second-hand goods at auctions or through specific advertised sources where the best prices are usually contained. It is also difficult to try to compare prices of used goods, and a lower price may indicate an older product.

D. Public works contracts and purchase contracts involving expenditures of ~~\$1,000 or less. The time and documentation required to purchase through this policy may be more costly than the item itself and therefore not be in the best interest of the taxpayer. In addition, it is not likely that such de minimis contracts would be awarded based on favoritism~~ 5,000 or less.

#### **§ 40-8.1 Individuals responsible for purchasing and their titles.**

The listing with name(s) and title(s) of the individual(s) responsible for purchasing shall be updated biennially by resolution and kept on file in the Office of the Town Clerk.

#### **§ 40-9 Annual review.**

This policy shall be reviewed annually by the Town Board at its organizational meeting or as soon thereafter as is reasonably practicable.