

## **Towns to Adopt Procurement Guidelines**

The legislation raising the General Municipal Law (GML), § 103 bidding limits to \$10,000 and \$20,000 for purchase and public works contracts, respectively, effective January 1, 1992, requires local governments to adopt procurement policies for purchases and contracts for services that are not required to be publicly bid.

New section 104-b requires goods and services not required to be competitively bid to be procured in a manner “so as to assure the prudent and economical use of public monies”. To reach that objective, the town board, by resolution, “shall adopt internal policies and procedures governing all procurement not required to be made pursuant to the competitive bidding requirement” of GML § 103.

The town board must solicit comments on its procurement policy and procedures from any of its officers involved in the procurement process, such as the superintendent of highways and purchasing director. The policies are to be reviewed annually.

The following is a basic sample procurement policy for your guidance and consideration. Each town should carefully consider its own particular circumstances in developing its procurement guidelines.

Please pay particular attention to Guideline 6 which identifies some circumstances where the town board may feel that it would not be in the best interest of the town to solicit alternative proposals or quotes. You may wish to modify, delete or add to that list. For one or more of the circumstances listed in Guideline 6, you might feel it appropriate to define a solicitation procedure entirely different from the approach taken in Guidelines 3 and 4. For example, you might elect to design a solicitation emphasizing experience or merit rather than price for certain profession services.

### **SAMPLE PROCUREMENT POLICY**

**WHEREAS**, §104-b of the General Municipal Law (GML) requires every town to adopt internal policies and procedures governing all procurement of goods and services not subject to the bidding requirement of GML §103 or any other law; and

**WHEREAS**, comments have been solicited from those officers of the town involved with procurement;  
**NOW, THEREFORE**, be it

**RESOLVED**: That the Town of \_\_\_\_\_ does hereby adopt the following procurement policies and procedures:

**Guideline 1.** Every prospective purchase of goods or 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 (hereafter Purchaser) shall estimate the cumulative amount of the items of supply or equipment needed in a given fiscal 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.

**Guideline 2.** All purchases of a)supplies or equipment which will exceed \$10,000in the fiscal year or b)public works contracts over \$20,000 shall be formally bid pursuant to GML §103.

### **Guideline 3.**

All estimated purchases of

- Less than \$10,000 but greater than \$3,000 requires a written request for a proposal (RFP) and written/fax quotes from 3 vendors.
- Less than \$3,000 but greater than \$1,000 requires an oral request for the goods and oral/fax quotes from 2 vendors.
- Less than \$1,000 but greater than \$250 are left to discretion of the Purchaser.

All estimated public works contracts of:

- Less than \$20,000 but greater than \$10,000 requires a written RFP and written/fax proposals from 3 contractors.
- Less than \$10,000 but greater than \$3,000 requires a written RFP and written/fax proposals from 2 contractors.
- Less than \$3,000 but greater than \$500 are left to discretion of the Purchaser.

Any written RFP shall describe the desired goods, quantity 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.

**Guideline 4.** The lowest responsible proposal or quote shall be awarded the purchase or public works contract unless the Purchaser prepares 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 bid. If a bidder is not deemed responsible, facts supporting that judgment shall also be documented and filed with the record supporting the procurement.

**Guideline 5.** A good faith effort shall be made to obtain the required number of proposals or quotes. If the Purchaser is unable to obtain the required number of proposals or quotes, the Purchaser will 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.

**Guideline 6.** Except when directed by the town board, no solicitation of written proposals or quotes shall be required under the following circumstances:

1. Acquisition of professional services;
2. Emergencies;
3. Sole source situations;
4. Goods purchased from agencies for the blind or severely handicapped;
5. Goods purchased from correctional facilities;
6. Goods purchased from another governmental agency;
7. Goods purchased at auction;
8. Goods purchased for less than \$250;
9. Public works contracts for less than \$500.

**Guideline 7.** This policy shall be reviewed annually by the town board at its organizational meeting or as soon thereafter as is reasonably practicable.

## General Municipal Law

§ 104-b. Procurement policies and procedures. 1. Goods and services which are not required by law to be procured by political subdivisions or any districts therein pursuant to competitive bidding 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 political subdivision or district, 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, the governing board of every political subdivision and any district therein, by resolution, shall adopt internal policies and procedures governing all procurements of goods and services which are not required to be made pursuant to the competitive bidding requirements of section one hundred three of this article or of any other general, special or local law. In cities with a population of one million or more, the procurement policy board shall develop and promulgate such policies and procedures by rule.

2. Such policies and procedures shall contain provisions which, among other things:

a. prescribe a procedure for determining whether a procurement of goods and services is subject to competitive bidding and documenting the basis for any determination that competitive bidding is not required by law;

b. provide that, except for procurements made pursuant to subdivision three of section one hundred three or section one hundred four of this article, section one hundred seventy-five-b of the state finance law, section one hundred eighty-six of the correction law, or the policies and procedures adopted pursuant to paragraph f of this subdivision, alternative proposals or quotations for goods and services shall be secured by use of written requests for proposals, written quotations, verbal quotations or any other method of procurement which furthers the purposes of this section;

c. set forth when each such method of procurement will be utilized, taking into account which method will best further the purposes of this section and the cost-effectiveness of the method;

d. require adequate documentation of actions taken in connection with each such method of procurement;

e. require justification and documentation of any contract awarded to other than the lowest responsible dollar offeror, setting forth the reasons such an award furthers the purpose of this section; and

f. identify the individual or individuals responsible for purchasing and their respective titles. Such information shall be updated biennially.

g. set forth any circumstances when, or types of procurements for which, in the sole discretion of the governing body (or in the case of cities with a population of one million or more, the procurement policy board), the solicitation of alternative proposals or quotations will not be in the best interest of the political subdivision or district therein.

3. Comments concerning the policies and procedures shall be solicited from officers of the political subdivision or district therein involved in the procurement process prior to the enactment of the policies and procedures, and from time to time thereafter.

4. The governing board shall annually review its policies and procedures. In the case of a city with a population of one million or more, the annual review shall be the duty and responsibility of the procurement policy board.

5. The unintentional failure to fully comply with the provisions of this section shall not be grounds to void action taken or give rise to a cause of action against the political subdivision or district or any officer or employee thereof.