

Procurement Policy for Town of Beekman

1. Overview

- a. Every purchase to be made must be initially reviewed by the department head to determine whether it is a purchase contract or a public work contract. Once that determination is made, a good faith effort will be made to determine whether it is known or can reasonably be expected that the aggregate amount to be spent on the item of supply or service is not subject to competitive bidding, taking into account past purchases and the aggregate amount to be spent in a year.
- b. A “Purchase Contract” applies to the procurement of goods and commodities.
- c. A “Public Work Contract” encompasses contracts for services, labor or construction.
- d. When a contract involves acquisition of both goods and services, if the services are minor, incidental or customarily provided by the vendor as a component of the purchase such as a commodity that requires installation, the contract should be viewed as a purchase contract for purposes of the competitive bidding monetary threshold.
- e. When a contract involves acquisition of both goods and services, if the services are extensive, substantial or involve specialty skills so that the acquisition of the commodity is incidental to the work, the contract should be treated as a public work contract for purposes of the monetary threshold.

2. Exceptions - The following items are not subject to competitive bidding pursuant to Section 103 of the General Municipal Law:

- a. Purchase contracts under \$20,000 and public work contracts under \$35,000;
- b. Emergency purchases as set forth herein;
- c. Insurance coverages, including health, dental, workers’ compensation, and general liability and property coverage insurances;
- d. Certain professional services as set forth herein;
- e. Items purchased from agencies for the blind or severely handicapped;
- f. Goods purchased from correctional institutions;
- g. Surplus and second-hand purchases as set forth herein;
- h. Purchases under New York State and any NYS county or local government contracts, or through a purchasing consortium, provided that the contract is awarded in a manner that constitutes competitive bidding consistent with NYS law and made available for use by other governmental entities and subject to the approval of the Supervisor and Corporation Counsel;
- i. Purchases from purchase consortiums may be approved during the year by resolution

of the Town Board if found to benefit the Town.

3. Documentation - Except as otherwise provided, all goods and services will be secured by use of written requests for proposals, written quotations, or any other method that assures that goods will be purchased at a competitive price from a responsible vendor without favoritism. Where the price agreed to is not the lowest price, the reason for preferring the chosen vendor shall be articulated and shall be related to the vendor's particular qualifications or method of providing the contracted goods or services which have been reasonably determined to be in the best interest of the Town in accordance with section 5 below.

4. Criteria for Number of Quotations or Proposals

The following method of purchase will be used when required by this policy in order to achieve the highest savings:

Estimated amount of Purchase Contract Method

\$ 0 to \$1,999 Department Head Discretion
\$2,000 to \$20,000 (3) Written Quotations or
Written Request for Proposals (RFP)
Over \$20,000 Purchase Requires Competitive Bidding, unless exempted

Estimated amount of Public Work Contract Method

\$ 0 to \$1,999 Department Head Discretion
\$2,000 to \$35,000 (3) or More Written Quotations or
Written Request for Proposals (RFP)
Over \$35,000 Purchase Requires Competitive Bidding, unless exempted

A good faith effort shall be made by the Department Head to obtain the required number of proposals or quotations. If the Department Head is unable to obtain the required number of proposals or quotations, the Department Head will document the attempts made at obtaining the proposals. In no event shall failure to obtain the proposals be a bar to the procurement.

5. Use of Purchase Requisitions and Purchase Orders

a. Requisitions – Purchase requisitions shall be issued by Town departments to provide documentation that all requested purchases in excess of \$2,000 (unless otherwise required by internal policy or requested by a vendor) have been authorized by the respective Department Head, that sufficient appropriations are available for the proposed purchase, that purchases are for valid and authorized municipal purposes, and that the purchase is made in accordance with the requirements set forth in this Procurement Policy with respect to the required use of price quotes, proposals, municipal or consortium contracts, or competitively bid contracts. Such documentation shall be attached to the purchase requisition.

b. The requirement to issue a purchase requisition is not intended to slow down departmental productivity, and the acquisition of necessary supplies, equipment and outside services can generally be obtained as needed with proper planning. No purchases shall be split into smaller components in order to avoid the requirement of a purchase requisition or to avoid the requirement of obtaining price quotes, proposals, or competitive bidding.

c. Blanket Purchase Orders – The use of blanket requisitions and blanket purchase orders shall be allowed, and encouraged, for items such as maintenance contracts, water chemical purchases, road salt, utility expenditures (gasoline, heating oil, natural gas, electricity), capital project public work contracts, and other on-going expenses throughout the year for which it is not practicable to obtain individual purchase orders (for example, materials and supplies from a hardware store). The use of blanket purchase orders shall not preclude the requirements of obtaining required price quotes, such as large purchases from a local hardware store.

d. Purchase Orders – After the review and approval of these requirements and documentation by the Town Treasurer, the purchase requisition shall be converted by the Finance Department into a purchase order for review and approval by the Supervisor or designee. Following approval by the Supervisor, the Finance Department shall send a copy of the approved purchase order to the Department Head, and the original purchase order and documentation shall be retained on file.

6. Contracts Awarded to Other than the Lowest Responsible Bidder

If the contract is awarded to someone other than the lowest bidder, then pursuant to General Municipal Law section 104-b the goods and services, “*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.*” The Department Head shall justify and document in writing the basis for awarding the contract to an individual or entity other than the lowest bidder. The documentation shall include the above-referenced factors from section 104-b.

7. Exemptions to Procurement Policy

Pursuant to General Municipal Law Section 104-b(2)(g), the procurement policy may contain circumstances when, or types of procurement for which, in the sole discretion of the governing body, the solicitation of alternative proposals or quotations will not be in the best interest of the municipality. In the following circumstances it may not be in the best interest of the Town of Beekman to solicit quotations to document the basis for not accepting the lowest bid, although use of Requests for Proposals, purchase requisitions and purchase orders may still apply:

a. Professional Services – Professional services, or services requiring special or technical skill, training, expertise, the exercise of professional judgment, or a high degree of creativity. The individual or company must be chosen based on accountability, reliability, responsibility, skill, education, training, judgment, integrity and moral worth. These 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.

In determining whether a service fits into this category, the Town of Beekman may consider whether the services are subject to State licensing or testing requirements, or whether substantial formal education or training is a necessary prerequisite to the performance of the services.

- b. Professional or technical services may include but not be limited to the following:
 - i. Services of a professional engineer, actuary, certified public accountant, insurance broker, consultant, or fiscal/financial advisor;
 - ii. Management of Town-owned property;
 - iii. Computer software or programming services for customized programs, or services involved in substantial modification and customization of pre-packaged software.
- c. Emergency Procurements - Section 103(4) of the General Municipal Law details an exception to bidding requirements for emergency situations, *“Notwithstanding the provisions of subdivision one of this section, in the case of a public emergency arising out of an accident, or other unforeseen occurrence or condition whereby circumstances affecting public buildings, property or the life, health, safety or property of the inhabitants of a political subdivision or district therein require immediate action which cannot await competitive bidding, contracts for purchase or public work or the purchase of supplies, material or equipment may be let by the appropriate office, board or agency of a political subdivision or district therein.”*
- d. Accordingly, the following three basic statutory criteria must be met in order to fall within the emergency exception:
 - i. The situation must arise out of an accident or unforeseen occurrence or condition.
 - ii. Public buildings, public property, or the life, health, safety or property of the Town’s inhabitants must be affected.
 - iii. The situation must require immediate action that cannot await competitive bidding. Even when a public emergency is declared, public interest dictates that public purchases are made at the lowest possible cost, seeking competition by informal solicitation of quotes or otherwise, to the extent practicable under the circumstances.
- e. Generally, there must be a present, immediate and existing condition which is creating an imminent threat or danger and which requires such immediate action that a further delay to comply with competitive bidding requirements would be so detrimental to the public interest that it overcomes the strong public policy in favor of bidding.
- f. Because the emergency must result from an accident or unforeseen occurrence, it is doubtful the Town may invoke the emergency exception in a situation which is the result of inaction or dilatory behavior on the part of local officials and which, therefore, could have been foreseen in time to advertise for bids.
- g. When circumstances support an emergency purchase, the requesting Town Department Head should attempt to locate a source for the goods or services. An attempt should be made to obtain the lowest price from a vendor or contractor who will best meet the requirements. When the supplies and the price have been established, the Department Head will so advise the Supervisor in writing of the need for the emergency purchase or contract. All proposals/quotations also shall be provided. This information will be made part of the procurement record. The Department Head shall complete the Emergency Procurement

Worksheet where an emergency purchase or contract is requested.

h. The Town Supervisor is authorized to designate an emergency purchase or emergency contract where the cost of the purchase or contract is \$15,000 or less. For emergency purchases or contracts where the cost exceeds \$15,000, the Town Board must approve the contract or purchase.

i. Purchases of surplus and second-hand goods from any source – General Municipal Law section 103(6) provides, “Surplus and second-hand supplies, material or equipment may be purchased without competitive bidding or competitive offering from the federal government, the state of New York or from any other political subdivision, district or public benefit corporation.” This exception does not apply to surplus and second-hand materials purchased from private entities. (NYCOM Purchasing Goods and Services: A Guide to Competitive Bidding and Procurement (2015)).

j. State Contracts - Service contracts entered into through New York State Office of General Services. In these instances, the State has already investigated and secured the best price for the municipality.

k. True Leases - Equipment leases are not subject to competitive bidding if the leases meet the following criteria: a) the term of the lease is less than the useful life of the equipment being leased and b) the lease does not provide for a buyout at the end of the term. The Supervisor has the discretion to require competition for such equipment leases.

l. Best value - Pursuant to Local Law 14-2021, Chapter 42 of the Town of Beekman Code, contracts may be awarded on the basis of lowest responsible bidder or best value. Best value is defined as, “*the basis for awarding certain purchase contracts to offerors that optimizes quality, cost and efficiency among responsive offerors. Such basis shall reflect, whenever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerors that are small business of certified minority or women-owned business enterprises...*” The decision to award a contract on the basis of best value shall be made by the Town Board.

m. Sole or Single Source Procurement - A contract may be awarded without competition when the Supervisor upon recommendation of the applicable Department Head who concludes in writing following a good faith review of available resources and publicly advertising the Town’s intention to make a purchase on a sole or single source basis 14 days prior to issuance of the award that there is only one source for the required commodity, supply, service or construction item. The Department Head shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of sole source procurements shall be maintained as a public record and shall list each supplier’s name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the contract number.

n. Generally, sole or single source procurement will only apply in the following situations:

i. Only one company makes and sells a certain good or provides a certain service.

ii. Only one company can service or maintain the equipment without voiding the warranty. (This only applies during the warranty period so the sole/single source exception cannot be used after the warranty expiration. After warranty expiration, repairs and

maintenance must be competitively bid.)

iii. Where the provided service is performed by a company with a specific territory.

o. In determining whether a procurement qualifies as a sole source the Supervisor and the applicable Department Head shall show, at a minimum:

i. The unique benefits to the Town of the item as compared to other products available in the marketplace.

ii. That no other product provides substantially equivalent or similar benefits.

iii. That, considering the benefits received, the cost of the item is reasonable in comparison to other products in the marketplace.

iv. That there is no possibility of competition, as from competing dealers or distributors.

p. If a Department Head intends to request a sole source purchase, it shall consider the following factors and submit the following documents to the Supervisor:

i. The Department Head should consider the additional time that will be required to process a sole source transaction due to the public advertising requirement, which is publication 14 days prior to issuance of the award.

ii. The Department Head should be aware that the public advertising requirement provides increased exposure to a challenge by other suppliers.

iii. The Department Head should be aware that if a challenge to the requested sole source procurement is found to be warranted, the purchase request shall be withdrawn and the request will be converted to either a competitive bid or request for proposals which may result in a further delay in completing the transaction.

iv. The Department Head shall submit to the Supervisor a letter providing the information detailed in sub-section C. The required sole source justification shall be detailed and sufficient enough to withstand a challenge by another supplier. A difference in price between potential suppliers is not, in and of itself, a proper justification for a sole source purchase. Additionally, a sole source letter provided by a supplier does not qualify as a proper justification for a sole source purchase.

q. Piggybacking - Pursuant to General Municipal Law section 103(16), and the Town Code, the Town may procure goods (including apparatus, materials, equipment and supplies) and services through contracts let by the United States or any agency thereof, any state or any political subdivision or district therein where such contract was let to the lowest responsible bidder or on the basis of best value (Town Code section 42-5). Approval for use of piggybacking will be by the Supervisor or Town Board depending on the value of the contract or service.

8. Cancellation of Invitations for Bids or Requests for Proposals - An invitation for bids, Request for Proposals, or other solicitation may be cancelled, or any or all proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause,

and in the best interest of the Town. The reason shall be made part of the procurement record or contract file. Each solicitation issued by the Town shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the interests of the Town. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for the cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.

9. Protest Policy - It is the policy of the Town of Beekman to provide all bidders with an opportunity to administratively resolve complaints or inquiries related to bid solicitations or pending contract awards. The Town encourages bidders to seek resolution of complaints concerning the contract award process through consultation with the responsible Department Head and Supervisor. All such matters will be accorded impartial and timely consideration. It is strongly recommended that Town staff encourage, be receptive to and resolve issues, inquiries, questions and complaints on an informal basis, whenever possible. Information provided by any interested party should be fully reviewed by the Department Head and the Supervisor. Responses to the inquirer should indicate the existence of a formal protest policy available to them should the informal process fail to resolve the matter. Staff should document the subject matter and results of any informal inquiries.

a. Bidders may file formal written protests. Final Town determinations or recommendations for award generally may only be reconsidered in the context of a formal written protest. Any potential bidder, who believes it has been aggrieved in the drafting or issuance of a bid solicitation, request for proposals or by a pending contract award, may present to the Supervisor a formal complaint and request administrative relief concerning such action (“Formal Protest”).

b. Formal protests which concern the drafting of bid solicitations or requests for proposals must be received by the Supervisor at least ten (10) business days before the date set in the solicitation for receipt of bids or date to submit responses to a request for proposals. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, formal protests concerning the bid document must be received by the Supervisor at least twenty-four (24) hours before the time designated for receipt of bids.

c. Formal protests concerning a pending contract award must be received within ten (10) business days after the protesting party knows or should have known of the facts which form the basis of a protest.

d. A formal protest must be submitted in writing to the Supervisor by mail, facsimile transmission or e-mail. The formal protest must include; a) a statement of all grounds for disagreement with the Town’s bid solicitation or procurement determination; b) a description of all remedies or relief requested; and c) all applicable supporting documentation. Protests should be delivered to the Supervisor at 4 Main Street, Poughquag, NY 12570 or by email at supervisor@townofbeekmanny.us.

e. Protests may be resolved through verbal or written correspondence, and/or either the protesting party or the Supervisor may request a meeting to discuss a formal protest. The Supervisor will conduct a review of the records involved in the protest. If a formal bid protest is received, a final determination on the protest should be made prior to approval of the award. However, during the pendency of the protest, bid evaluation and review of the

recommended award may continue to be conducted at the discretion of the Supervisor

f. A copy of the Supervisor's decision stating the reasons upon which it is based and informing the protester of the right to appeal an unfavorable decision to the Town Board shall be sent to the protesting party within twenty (20) business days of receipt of the protest, except upon notice to the protesting party, the period may be extended. The Supervisor's determination shall be included in the bid file. If the Supervisor determines that there are compelling reasons, including the need to proceed immediately with the contract award in the best interest of the Town, then the protest procedure herein may be suspended and such determination shall be documented in the procurement documents.

g. Should the protesting party be dissatisfied with the protest determination, a written appeal may be directed to the Town Board by mail at 4 Main Street, Poughquag, NY 12570 or by email at supervisor@townofbeekmanny.us. Written notice of appeal must be received no more than ten (10) business days after the decision is sent to the protesting party. Unless a timely Notice of Appeal is received, the decision of the Supervisor shall be a final determination. The decision of the Town Board shall be issued within twenty (20) business days of receipt of the notice of appeal. The appeal to the Town Board may not introduce new facts unless responding to issues raised by the Supervisor in the initial protest determination.

10. Disposal of surplus personal property –

a. Non-Computer Surplus Personal Property - Surplus personal property may only be disposed of in accordance with Article 8, § 1 of the New York State Constitution and Section 2-a of the Town Law. Given the lack of formal procedure provided by these provisions and the variety of personal property the Town may possess, disposal of such personal property should be disposed of only after consultation between the Department Head, the Town Board, and Corporation Counsel.

b. Surplus Computer Equipment - Section 104-c of the General Municipal Law authorizes the to dispose of unneeded computers, software, and computer equipment through donation to public schools, public libraries, and other public and private institutions for secular educational use, and to not-for-profit institutions for use by individuals with disabilities, senior citizens, or low income individuals, upon proof of need by such institution and subordinate to the requirements of the public schools and libraries of the state. Such donations shall be based on a public notification process and competitive proposal submitted to the Town by eligible donee institutions, which shall demonstrate:

i. the donee's need for surplus computers, computer software, and computer equipment; and

ii. the donee's specific plans for the use of such equipment.

11. Procurement Ethics - Procurements are an expenditure of public monies, and public employees must always ensure that all procurements are conducted so as not to cause any concern that special considerations have been shown to a bidder/proposer. Actions such as providing a bidder/proposer with information that is not available to other bidders/proposers or accepting a gift from a potential contractor could be construed as showing favoritism, and may violate state and/or Town law. Attention is called to General Municipal Law Article 18.

Contractors and their representatives have a responsibility to deal ethically with the Town and its employees, and to respect the ethical duties of Town employees. Information provided by contractors to the Town must be complete and accurate. Contractors must at all times avoid conduct that is in restraint of competition. Contractors must not request Town employees to engage in conduct that would violate the law.

12. Guidance - The Supervisor, Treasurer and Corporation Counsel shall be the municipal officials responsible for providing guidance and making decisions as to application of this procurement policy.