



Town of Homer
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PROCUREMENT POLICY FOR THE TOWN OF HOMER

SECTION I

- A. Goods and services that are not required by law to be procured pursuant to competitive bidding must be procured in a manner that ensures the economical use of public moneys in the best interest of the taxpayers; to facilitate the acquisition of goods and services of maximum quality at the lowest cost under the circumstances; and to guard against improvidence, extravagance, fraud, and corruption. To further these objectives, the Town Board is adopting these 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 General Municipal Law (GML), section 103 or of any other general, special, or local law.
- B. Every prospective purchase of goods or contract for service must be initially reviewed to determine whether it is a purchase contract or a public works contract. Once that determination is made, a good faith effort shall 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 or is not subject to competitive bidding, taking into account past purchases and the aggregate amount to be spent in a year.
- C. The following are not subject to competitive bidding pursuant to the General Municipal Law, but are subject to this internal procurement policy:
 - (1) Purchase contracts under \$20,000.00 (GML Section 103);
 - (2) Public works contracts under \$35,000.00 (GML Section 103);
 - (3) Purchase on state contract through the Office of General Services (GML Section 104)
 - (4) Purchase or work is required by virtue of a public emergency arising out of an accident or unforeseen occurrence (GML Section 103);
 - (5) Purchase of surplus or second –hand supplies, materials or equipment from the federal government, the State of New York or any other political subdivision, district or public benefit corporation (GML Section 103);

- (6) Contracts for professional services or those requiring special or technical skill or expertise;
- (7) Where the subject of the contract is controlled by a sole source so that there is no possibility of competition;
- (8) Purchases made under county contract (GML Section 103); and
- (9) True leases (GML Section 103).
- (10) Purchases which comply with the attached Piggybacking Policy
- (11) The source selection requirements of this policy shall not apply where a federal or state statute, regulation or order expressly authorizes or requires that a procurement be made from a specified source. (See for example Section XI below.) All other provisions of this policy shall apply to such procurement.

D. The decision that a purchase or public works contract is not subject to competitive bidding must be documented in writing by the person making the purchase or contract for services ("purchaser"). This documentation may include Town Board resolutions, minutes or memoranda, written or verbal quotes from vendors, telephone logs (for verbal quotes), requests for proposals (RFP), written or verbal proposal from contractors, contracts (e.g. copies of State/County contracts), a copy of the contract or proposal indicating the source which makes the item or which will provide the service, checklists, flowcharts, a memo from the purchaser indicating how the decision was arrived at, and /or detailing the circumstances which led to an emergency purchase, or any other written documentation this is appropriate.

SECTION II

All goods and services which are not subject to competitive bidding or otherwise provided for in the policy will be secured by use of written Requests for Proposal (RFP), written quotations or any other method that assures goods and services will be procured at the lowest price and that favoritism will be avoided.

Pursuant to GML §104-b(2)(f), the individuals responsible for purchasing, listed by their respective titles, are as follows (shall be updated biennially):

Town Supervisor
Highway Superintendent
Town Clerk
Town Bookkeeper
Town Justice
Assessor

SECTION III

- A. The following methods of procurement will be used when required by this procurement policy in order to achieve the highest savings:

Estimated Amount of purchase contract

Method

Up to \$1000.00	No Action. Discretion of purchaser, per approved budget.
\$1,000.00 to \$1,999.00	Oral request for goods, written, faxed, or emailed quotations from 2 vendors.
\$2,000.00 to \$3,999.00	Oral request for goods, written, faxed, or emailed quotations from 3 vendors.
\$4,000.00 to \$20,000.00	Written RFP, and written, faxed, or emailed quotations from three
or	more vendors.
Over \$20,000	Subject to Competitive Sealed Bid per GML 103 (1).

Estimated amount of public works contract

Method

Up to \$1000.00	No Action. Discretion of (purchaser)-Supervisor.
\$1000.00 to \$2,999.00	Oral request, with written, faxed, or emailed proposal from Contractor.
\$3,000.00 to \$11,999.00	Written RFP, with written, faxed, or emailed proposals from at least two Contractors.
\$12,000.00 to \$35,000.00	Written RFP, with written, faxed or emailed proposals from three or

more Contractors.

Over \$35,000

Subject to Competitive Sealed Bid
per GML 103 (1).

- B. A written RFP shall describe the desired goods or services to be performed, including the quality and particulars of delivery or performance. The purchaser shall compile a list of all vendors from whom proposals/quotes have been requested and from whom proposals/quotes are received.
- C. 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 will document the attempt made to obtain such proposals or quotations. In no event shall a failure or inability to obtain proposals or quotations be a bar to procurement.
- D. All information gathered in complying with the procedures of this policy shall be preserved and filed with the documentation supporting the subsequent purchase or public works contract.

SECTION IV

The lowest responsible quote or proposal shall be awarded the purchase or public works contract unless, pursuant to GML §104-b(2)(e), 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 lowest bidder or proposer. Documentation of an award to other than the low bidder will include an explanation of how the awarded contract will achieve savings or how the lowest bidder was not responsible. The determination of a bidder being declared not responsible shall be made and documented by the purchaser and filed with the record of the purchase.

SECTION V

In accordance with the General Municipal Law Section 104-b(2)(G), the solicitation of alternative quotations or proposals will not be required but must be documented in writing where, in the best interest of the municipality, proper qualifications are not necessarily found in the individual or company that offers the lowest price, and the nature of goods or services are such that they do not readily lend themselves to competitive procurement procedures, as in the following circumstance:

- A. Professional services or services requiring special or technical skill, training, or expertise. Professional and technical services shall include, but not limited to the following:
 - 1. Services of an attorney;
 - 2. Services of a physician;

3. Technical services of an engineer or architect engaged to prepare plans, maps and estimates;
 4. Securing insurance coverage and/or services of an insurance broker, should be rebid every 3 years;
 5. Services of a certified public accountant;
 6. Investment management services;
 7. Printing services involving extensive writing, editing or artwork;
 8. Management of municipally owned property; and
 9. Computer software or programming services for customized programs or services involved in substantial modifications and customizing or prepackaged software.
- B. The individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity, and moral worth. In determining whether a service fits into this category, the Town Board shall take into consideration the following guidelines:
1. Whether the services are subject to state licensing or testing requirement;
 2. Whether substantial formal education or training is a necessary prerequisite to the performance of the services; and
 3. Whether the services require a personal relationship between the individual and municipal officials.

SECTION VI

Except when directed by the Town Board, no solicitation of written proposals or quotation as otherwise provided for in this policy shall be required under the following circumstances:

- A. Contracts for emergency purchase or services pursuant to General Municipal Law Section 104(4). Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternative proposals may threaten the life, health, safety or welfare of the residents of the Town. This section does not preclude alternate proposals if time permits.
- B. Procurements for which there is no possibility of competition (sole source items).

- C. Goods up to \$1,000.00 and public works contracts for up to \$1,000.00 The time and documentation required to purchase through this procurement policy may be more costly than the item itself and therefore not be in the best interest of the taxpayers. In addition, it is not likely that the awarding of such (de minimis) minor contracts would be based on favoritism.

SECTION VII

No portion of this policy shall be construed as preventing the competitive bidding of purchase contracts under \$20,000.00 or public works contracts under \$35,000.00 if so desired.

SECTION VIII

Pursuant to GML §104-b (4) the Town Board shall review this policy annually.

SECTION IX

TOWN OF HOMER PROCUREMENT POLICY TO ALLOW PIGGYBACKING

Many local governments have been approached by vendors offering goods and services under other governmental contracts and, in some cases, vendors have asserted that the contract falls within the exception in GML §103. **It is the responsibility of Homer Town Board to review each proposed procurement to determine, on advice of the town's counsel what is appropriate and whether the procurements falls within the exception .**

The three prerequisites that must be met in order for a procurement of apparatus, materials, equipment and supplies, and related installation, repair and maintenance services, to fall within this exception:

1. The contract must have been let by the United States or any agency thereof, any state or any other political subdivision or district therein. Therefore, there must be an underlying contract let by one of the listed governmental entities. Contracts developed for use by local governments that are let by private parties (e.g., a private company, association or not-for-profit corporation is the party awarding the contract to the vendor), and not by the United States or any agency thereof, any state or any other political subdivision or district therein, would not fall within the exception.

The phrase "any state or other political subdivision or district therein" clearly includes other states, and political subdivisions in other states. In our view, it also includes New York State political subdivisions. Therefore, in addition to the current competitive bidding exception for certain purchases through contracts of New York State counties (County Law § 408-a; GML § 103 [3]), local governments also may purchase through qualifying contracts let by other New York State political subdivisions under this exception.

2. The contract must have been made available for use by other governmental entities. This means that the other governmental entity has taken steps to make its contract available for New York local governments. In general, this would occur by inclusion in the contract let by the other entity of a clause extending the terms and conditions of the contract to other governmental entities.

Unilateral offers by vendors to extend contract pricing and other terms and conditions would not fall within the exception.

3. The contract must have been “let to the lowest responsible bidder or on the basis of best value in a manner consistent with this section.” The term “consistent with this section” refers to General Municipal Law § 103 (and related case law) applicable to New York State political subdivisions. The purchasing local government would need to obtain background information on the procedures used to let the contract and, as necessary, consult with its counsel, to determine whether this prerequisite is met. Additional guidance on complying with this prerequisite follows.

DETERMINING CONSISTENCY WITH GML § 103

In order for a non-New York contract to have been let to the lowest responsible bidder or on the basis of best value (competitive offering) in a manner “consistent” with GML § 103, the procedures used by that government need not be exactly the same as those under GML § 103. Rather, the procedures for letting the non-New York contract must be in harmony or general agreement with, and further the same principles as the competitive bidding or best value requirements of GML § 103.4 In this regard, the courts in this state have stated that the underlying purposes of GML § 103 are to guard against favoritism, improvidence, extravagance, fraud and corruption, and to foster honest competition in order that the local government may obtain the best goods and services at the lowest possible price to protect the public fiscally.

Based on the provisions of GML § 103 as construed by the courts in this State, and the underlying purposes of GML § 103, we believe there are four fundamental elements that should be present in the procedures used by the non-New York entity in letting its contract in order for the process to have been let to the lowest responsible bidder or on the basis of best value consistent with GML § 103. These elements are:

Public solicitation of bids or, in the case of best value, offers. A public solicitation is consistent with the statutory advertising requirement in GML § 103 and serves to ensure that the purposes of GML § 103 are furthered.

Submission of sealed bids or offers, or analogous procedures to secure and preserve the integrity of the process and confidentiality of the bids or offers submitted. A secure competitive bidding or best value process is consistent with the sealed competitive bidding and competitive offering requirements of GML § 103 and helps foster honest competition and guard against collusion.

Preparation of specifications or similar documentation provides a common standard for bidders or proposers to compete fairly. Consistent with the purposes of GML § 103, the contracting entity, in advance of the submission of bids or offers, should convey the nature of the goods or services and other information necessary for prospective bidders or proposers to make an intelligent evaluation and bid or offer, without being unduly restrictive. In the case of a best value process, this generally should include a description of the manner in which the evaluation of the offers and award of the contract will be conducted and, as appropriate; identify the relative importance or weight of price and non-price factors.

Award to the lowest bidder who materially or substantially meets the bid specifications and is

determined to be a responsible bidder, or in the case of a best value process, an award to the responsive and responsible proposer which optimizes quality, cost, and efficiency, reflecting objective and quantifiable analysis, whenever possible. A contract awarded through a negotiation process would not be consistent with the requirements and purposes of awarding to the lowest responsible bidder or on the basis of best value in a manner consistent with GML § 103.

OTHER FACTORS TO CONSIDER; INTERNAL CONTROLS

Contractual Relationship: By placing an order with the contract vendor, the Purchasing local government generally will be entering into a contractual relationship with that vendor in accordance with the terms and conditions of the contract. Accordingly, local officials, in consultation with the attorney for the local government as necessary, should carefully review those terms and conditions before making the purchase. In some cases, the contract may have been let in a manner consistent with GML § 103, but the terms and conditions of the contract may conflict with other New York State laws or regulations. This could result in the local government being unable to use the contract.

Audit of Claims: The payment to the contract vendor will be subject to standard procedures for claims processing, including audit of claims procedures.

Cost Savings Justification: Unlike recent amendments to GML §§ 103 and 104 pertaining to county and certain federal contracts (e.g. L 2003, ch 62; L 2011, ch 97), GML § 103 does not expressly require local governments to consider whether the contract will result in cost savings. Nonetheless, local officials should perform a cost-benefit analysis before utilizing this exception. This will help ensure that the local government is furthering the underlying purposes of the new law, and that the procurement is consistent with the purposes of GML § 103. The analysis should be used to demonstrate whether “piggybacking” is cost effective and should consider all pertinent cost factors, including any potential savings on the administrative expense that would be incurred if the local government initiated its own competitive bidding or best value process.

Documentation: Local governments should maintain appropriate documentation to allow for a thorough review of the decision to use this exception to competitive bidding by local government officials, external auditors, and taxpayers. This documentation may include such items as copies of the contract, analysis of the contract to ensure it meets the three prerequisites stated above, and cost savings analysis including consideration of other procurement methods.

PROCUREMENTS BELOW THE BIDDING MONETARY THRESHOLD; POLICIES AND PROCEDURES

As noted, GML § 103 provides an exception to the requirements of subdivision one of that section. However, procurements that are below the monetary thresholds set forth in Section 103 (1)13 (or otherwise fall within another exception, such as emergency purchases) already are exempt from the requirements of GML § 103. Those procurements, instead, are subject to the local government’s own procurement policies and procedures adopted pursuant to GML § 104-b. Therefore, whether a local government may make purchases that are below the statutory thresholds by “piggybacking” on contracts let by governmental entities listed in GML § 103 (16) will be governed by the local government’s own procurement policies.

SECTION X

Town of Homer procurement policy concerning NJPA.

The Town of Homer recognizes the National Joint Powers Alliance® as a national public service agency committed to serving its members nationally and locally through a variety of valued programs. As a public agency, they are committed to providing cooperative solutions that assist Government and Education entities as they strive for efficient public service.

The Town of Homer's Member number is

Per. N.Y. GEN. MUN. §103 (update per NYS Law)

Notwithstanding the provisions of subdivisions one, two and three of this section, and section one hundred four of this article, any officer, board or agency of a political subdivision or of any district therein authorized to make purchases of apparatus, materials, equipment or supplies, or to contract for services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies, may make such purchases, or may contract for such services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies, as may be required by such political subdivision or district therein through the use of a contract let by the United States of America or any agency thereof, any state or any other political subdivision or district therein if such contract was let to the lowest responsible bidder or on the basis of best value in a manner consistent with this section and made available for use by other governmental entities; provided, however, that no political subdivision or district therein, other than a city with a population of one million or more inhabitants or any district, board or agency with jurisdiction exclusively therein, may make such purchases or contract for such services through the use of such a contract let on the basis of best value in a manner consistent with this section unless the political subdivision or district shall first adopt a local law, rule, regulation or resolution, as the case may be, pursuant to subdivision one of this section, authorizing the use of best value for awarding purchase contracts.

The authority provided to political subdivisions and districts therein pursuant to this subdivision shall not relieve any obligation of such political subdivision or district therein to comply with any applicable minority and women-owned business enterprise program mandates and the preferred source requirements of section one hundred sixty-two of the state finance law.

It is the responsibility of Homer Town Board to review each proposed procurement to determine on advice of the town's counsel what is appropriate and whether the procurements falls within the exception.