

PURCHASE AND SALE OF PROPERTY AND SERVICES

VILLAGE OF WARWICK, NEW YORK

Procurement Policy

Adopted & Effective - January 19, 2021

I. OVERVIEW

A. Introduction and Purpose

The Procurement Guideline is designed to assist the Village of Warwick in making procurement efficiently and effectively by providing staff with a source of basic, systematic guidance about procurement policies and practices while protecting the interests of the Village of Warwick and its taxpayers, on the one hand, and promoting fairness in contracting with the business community on the other.

Appropriation Requirement- Before a municipality may expend municipal funds, it must first appropriate funds for the purpose. **Village Law** explicitly addresses this in §-5-520(2) which provides that “no expenditure shall be made, nor shall any contract which any manner involves the expenditure of money or the incurring of any pecuniary liability be entered into, unless an amount has been appropriated for that particular purpose and is available therefor or has been authorized to be borrowed pursuant to local finance law”. Before a purchase order is provided to a supplier or contractor, or a contract is entered into, it should be approved by the Treasurer indicating the availability of an appropriation for such purpose. If there is no appropriation or an appropriation is insufficient, the purchase order or contract should not be executed into until the appropriate steps are taken to amend the budget, ensuring the necessary funds are authorized and available.

B. Competition and Maintaining a Fair and open Competition

The Village of Warwick’s procurement process is designed to:

- Ensure fair and open competition
- Guard against favoritism, improvidence, extravagance, fraud and corruption.
- Ensure that the results meet the Village of Warwick’s needs.
- Provide for checks and balances to regulate and oversee Village procurement; and
- Protect the interests of the Village of Warwick’s taxpayers.

Competition in the procurement process serves both the Village of Warwick and potential offerors by ensuring that the procurement process produces an optimal solution at a reasonable price; and allowing qualified venders an opportunity to obtain Village of Warwick business.

II. PROCUREMENT

A. Procurement Vehicle and Order of Purchasing Priority

The Village of Warwick undertakes procurements to address a wide range of needs. To meet their varying needs and their form, function and utility requirements, the Village must first identify their specific needs relevant to General Municipal Law requirements and goals.

Procurements Subject to State Competitive Bidding- The following items are subject to competitive bidding pursuant to General Municipal Law, § 103 and must be procured through the outline therein:

- Purchase contracts over \$20,000
- Public works contracts over \$35,000

Procurements Not Subject to State Competitive Bidding Requirements- The following items are either not subject to or are exceptions to General Municipal Law, § 103 competitive bidding requirements:

- Purchase contracts under \$20,000 and public works contracts under \$35,000
- Acquisition of professional services;
- Emergency purchases;
- Goods purchased from agencies for the blind or severely handicapped;
- Goods purchased from correctional facilities;
- Purchases under state and county contracts;
- Surplus and secondhand purchases from another government entity.

Documentation Required- The determination that a purchase is not subject to competitive bidding requirements under General Municipal Law § 103 must be documented in writing by the Village Treasurer. This documentation will include:

- Written or verbal quotes from vendors; or
- A memo from department heads indicating how the decision was arrived at; or
- A copy of the contract indicating the source that makes the item or service exempt; or
- Any other written documentation that is appropriate.
- The completion of Purchasing Quotation Summary Form- **Exhibit A**

III. GENERAL GUIDANCE FOR SOLICITATIONS

- A. Purchase Classification-** Every purchase made by a Village official, employee or agent, must undergo initial review on a case by case basis in order to determine whether it is a purchase contract or a public works contract. Purchase contracts involve the purchase of good, supplies or equipment, while public works contracts involve services, labor, or construction. Many

times, contracts involve goods and services and it is difficult to determine which bid to apply. Generally, the rule is, if the contract involves substantial services or specialized skills, it is considered a public works contract. On the other hand, if service or labor is only a minimal or incidental part of the contract, it is considered a purchase contract. Once that determination is made, a good faith effort will be made to determine whether it is known or can be expected that the **aggregate** amount to be spent on the item of supply or services is subject to competitive bidding, taking into account past purchases and the aggregate amount to be spent in any one budget year.

Note: Aggregate amount determination- Once the determination is made regarding whether the procurement constitutes a purchase contract or a public works contract, a good faith effort will be made to determine whether it is known, or can be reasonably expected, that the aggregate amount to be spent on the goods or services falls below the monetary threshold for state competitive bidding laws set forth under General Municipal Law § 103. This determination must take into account past purchases and the aggregate amount to be spent in a year. The year commences on date of first purchase.

- B. Mandatory Competitive Bidding-** Competitive bidding is mandatory for all purchase contracts (goods and equipment) over twenty thousand (\$20,000) dollars and all public works contracts (service, labor and construction) over thirty-five thousand (\$35,000) dollars pursuant to General Municipal Law § 103. In determining the necessity for bidding, the total amount to be spent for an item or commodity in a fiscal year must be considered. Competitive bidding is required when it is known or can be reasonably anticipated that the aggregate amount to be spent on purchases of an item will exceed the bid limits over the course of a fiscal year.

IV. AWARDS TO OTHER THAN THE LOWEST RESPONSIBLE DOLLAR OFFEROR

Whenever a contract is awarded to someone other than the lowest responsible dollar offeror, the reasons why shall be documented as follows:

- A. Best Value-** Notwithstanding anything else contained in this policy, the Village may award purchase contracts and service contracts that have been procured pursuant to competitive bidding under General Municipal Law, § 103(1) or otherwise under this policy by either the lowest responsible bidder standard or the best value standard.
- **Definition** “Best value” is defined in State Finance Law, § 163 as, “the basis for awarding contracts for services to the offeror which optimizes quality, cost and efficiency, among responsive and responsible offerors.” For the purposes of this section, the Village adopts the above definition of “best value” as may be modified from time to time by the State Legislature.
 - **Applicability.** The best value standard may only be used for purchase contracts, which includes contracts for service work, but excludes any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law. When awarding contracts under the best value standard, the Village must consider the overall

combination of quality, price, and other elements of the required commodity or service that in total are optimal relative to the needs of the Village. Use of the best value standard must rely, wherever possible, on objective and quantifiable analysis. The best value standard may identify as a quantitative factor whether offerors are small businesses or certified minority- or women-owned business enterprises as defined in New York Executive Law, § 310.

- **Approval.** Use of the best value standard for the procurement of goods and services requires approval from the Village. The Board of Trustees must also approve the factors to be considered when awarding contracts under this standard.
- **Documentation Required.** The determination that a purchase may be awarded on the basis of best value must be documented in writing by the department head. This documentation may include a memo from the department head indicating how the decision was arrived at or any other written documentation that is appropriate.

V. ITEMS EXCEPTED FROM THIS POLICY AND PROCEDURES BY THE VILLAGE BOARD

Pursuant to General Municipal law § 104-b(2)(g), this policy may contain circumstances or types of procurements for which, in the sole discretion of the Village Board, the solicitation of alternative proposals or quotations will not be in the best interest of the Village. In the following circumstances it may not be in the best interests of the Village to solicit quotations or document the basis for not accepting the lowest bid:

A. **Professional Services** –The Village may forego competitive bidding requirements if it is seeking professional services requiring special or technical skill, training or expertise.

The individual or company must be chosen based on accountability, reliability, skill, education, judgement, integrity and moral worth. These qualifications are not necessarily found in individual(s), vendor or company that offers the lowest prices and the nature of these services that do not readily lend themselves to competitive procurement procedures. In determining whether a service fits into this category the Village Board shall take into the consideration the following guidelines:

- Whether the service requires a high degree of specialized skill or expertise.
- Whether the contract involves a relationship of personal trust and confidence.
- Must not be, in substance, a purchase or public work.

Professional or technical services shall include but not limited to the following: services of an attorney or physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing; and computer software or programming services for customized program, or services involved in substantial modification and customizing of pre-package software. Provisions should be made on frequency of RFP's for periodic solicitation at reasonable intervals.

B. Emergencies-Under General Municipal Law § 103(4), the Village may forego compliance with competitive bidding requirements when a situation arises that requires emergency procurement. In order to invoke this exception, the situation must (1) result from an accident or unanticipated occurrence, (2) impact public buildings, property, or the life, health, and safety of Village residents, and (3) require immediate action that cannot wait for competitive bidding. If the incident invoking the emergency clause could have been avoided or the municipality failed to act to prevent the emergency, it is unlikely that the Village can rely upon the exception. In addition, if the Village created the event necessitating emergency procurement, it may not invoke this exception. If the Village properly invokes the emergency clause, it should still work to obtain the good or service needed at the lowest cost available.

C. Sole Source- The Village is not required to engage in competitive bidding when it requires a good or service available from only one possible source. The Village must demonstrate that the acquisition of the good or service sought is in the public interest and is available from only one source, for which there is no equivalent. A good or service serves the public interest if there are unique benefits arising from the good or service as compared to a different good or service, no other good or service provides substantially similar benefits and the cost is reasonable when considering the benefit conferred on the Village. The Village may not use the sole source exception in anticipation that only one bid will be placed on the contract.

D. Cooperative or Piggyback Contract-the Village might find it more efficient to establish a contract based on another governmental entity's contract. General Municipal Law 103 (16) allows for the procurement of goods and services through contracts led by the United States or any agency thereof, any state or any other political subdivision or district therein, if such contract was led in a manner consistent with competitive bidding and has been made available for use by other governmental entities. Through cooperative purchasing, or piggybacking, a governmental subdivision has already investigated and secured the lowest price for the Village.

E. Surplus and Second-Hand Supplies, Materials and Equipment- The Village may purchase surplus and second-hand supplies, material or equipment without competitive bidding from the federal government or any other political subdivision or public benefit corporation. This exception does not apply to surplus and second-hand materials purchased from private entities.

G. Shared Services, Efficiencies and Municipal Corporation. Municipalities are encouraged and authorized to share services and work together when possible to reduce costs.

VI. Purchase Orders-

That the Board of Trustees authorizes payment in advance of audit claims for public utility services including electric, gas, water, sewer and telephone services, postage, freight, and express charges. All such claims must be presented at the next regular meeting for audit and the claimant and the officer incurring or approving the claims are jointly and severally liable for any amount the Board of Trustees disallows.

VII. Approval of Purchases- All purchases and contracts not budgeted for goods or services over \$500.00 shall require the Mayor's approval and consensus of the Board, unless they are part of a previously approved project or activity. All purchases and contracts not requiring independent Village Board approval must be authorized by an elected Village Official or Village Clerk before initiating.

VIII. Method of Purchase- Documentation of actions taken in connection with each method of procurement is required as follows:

<u>Estimated Amount of Purchase Contract</u>	<u>Method</u>
\$0-\$1999	Discretion of Department Head
\$2,000-19,999	3 written/fax/email quotations Or written requests for proposals
Above \$20,000	Competitive bidding

<u>Estimated Amount of Public Works Contracts</u>	<u>Method</u>
\$0-1,999	Discretion of Department Head
\$2,000-34,999	3 written/fax/email quotations Or written requests for proposals
Above \$35,000	Competitive bidding

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 at obtaining the proposals in writing.

IX. The following are considerations that apply to most solicitations:

A. 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 the vendor.

B. Mandatory Requirements-procurements whether using an Invitation for Bids, Request for Proposals, or other method, must comply with a number of different statutes, regulations, and policy requirements. Principal among these are:

- Sales tax certification.
- Prevailing wage schedules;

- Reference and compliance with Executive Law Article 15-A (M/WBE & EEO);
- Workers' compensation insurance and disability benefits insurance;
- Legal authority to do business in New York State

X. Required Statements for Submissions Made Pursuant to Competitive Bidding

A. The Iran Divestment Act- Every written offer made to the Village must contain the following statement subscribed and affirmed by the offeror as true under the penalties of perjury. By submission of this offer, each offeror and each person signing on behalf of any offeror certifies, and in the case of a joint offer each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each offeror is not on the list created pursuant to State Finance Law § 165-a(3)(b).

B. Statement of Non-Collusion Every written offer made to the Village must contain the following statement subscribed and affirmed by the offeror as true under the penalties of perjury.

By submission of this offer, each offeror and each person signing on behalf of any offeror certifies, and in the case of joint offeror each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

- The prices in this offer have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- Unless otherwise required by law, the prices quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening, directly or indirectly, to any other offeror or to any competitor; and
- No attempt has been made or will be made by the offeror to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

C. Statement for Non-Bid Procurements- Offers submitted in a manner other than competitive bidding shall also contain the above statements; however, the failure to include them shall not result in automatic rejection.

XI. ANNUAL REVIEW

The governing board of the Village shall annually review and, when necessary, update this policy and its procedures.

**VILLAGE OF WARWICK PROCUREMENT POLICY - EXHIBIT A
PURCHASING QUOTATION SUMMARY FORM**

- | | | |
|---|--|--------------------|
| ► <u>Purchase Contracts (Single Item Purchase)</u> | <u>Public Works Contracts (Services/Construction)</u> | |
| \$2,000 - \$19,999 | (3) Written/Email/Fax Quotes | \$2,000 - \$34,999 |
| Above \$20,000 | Mandatory Competitive Bidding | Above \$35,000 |
- Aggregate purchases totaling over \$20,000 -- must follow mandatory competitive bidding process.
- This form **must** be attached to voucher and invoice for Board approval.

DESCRIPTION OF PURCHASE

<u>BUDGETED PURCHASE</u> <input type="checkbox"/> YES <input type="checkbox"/> NO		<u>BUDGET CODE</u>	<u>CURRENT LINE BALANCE</u> \$
			Signature: _____ Date: _____
<u>BUDGETED AMOUNT</u> \$		<u>IF NO EXPLAIN</u>	

#	DATE OF QUOTE	VENDOR/SUPPLIER	TOTAL COST
1			\$
2			\$
3			\$

VENDOR SELECTED

IF NOT LOWEST BID EXPLAIN WHY

IF ONLY (1) QUOTE EXPLAIN OR IF A SOLE SOURCE

EXCEPTIONS TO COMPETITIVE BIDDING

<u>OTHER GOVERNMENTS</u> STATE - COUNTY MUNICIPAL BID CONTRACTS	<u>NAME OF AGENCY</u>		
	<u>VENDOR/SUPPLIER</u>		<u>CONTRACT#</u>
	<u>TOTAL COST \$</u>		<u>BID PERIOD EXPIRES</u>
	<u>ADDITIONAL INFORMATION</u>		

****EMERGENCY PURCHASE** - Must meet one of the following situations**

- 1) Result from accident or unanticipated incident
- 2) Impact public buildings, property, or the life, health & safety of municipal residents
- 3) Requires immediate action that cannot wait for competitive bidding

REASON FOR EMERGENCY PURCHASE - ATTACH ADDITIONAL DOCUMENTATION

DEPARTMENT APPROVAL

Name/Title: _____ Date: _____

Signature: _____