

# Town of Lake Pleasant

## PROCUREMENT POLICIES AND PROCEDURES PURSUANT TO NEW YORK STATE LAW

This procurement policy and procedures applies to:

- Purchase contracts of less than \$20,000,
- Contracts for public work of less than \$35,000, and
- Professional services and other procurements not required by law to be competitively bid.

It is important to distinguish between contracts for public works and purchase contracts. In general, purchase contracts involve the acquisition of commodities, materials, supplies, or equipment; contracts for public work involve services, labor, and construction. As a general rule, if the contract involves a substantial amount of services, such that it is the focal point and the acquisition of goods is incidental, it will be considered a contract for public works. Conversely, if services or labor are minimal or incidental to the acquisition of goods, it is a purchase contract.

All such expenditures shall be made in accordance with the following policies and procedures. These are intended to promote the town's best interests by making the purchasing process as competitive and objective as possible.

a. Except when directed by the Town Board, no solicitation of written proposals or quotations shall be required under the following circumstances:

- Emergencies
- Sole source situations
- Goods purchased from Correctional Institutions
- Goods or services purchased from another government agency or public jurisdiction

within New York state that provides services to municipal governments (NYS Office of General Services, county contracts, General Municipal Law 104)

- Goods purchased from surplus government auction or surplus / secondhand goods from another government entity
- Goods or services of less than \$2,999

b. Except for procurements made pursuant to General Municipal Law, State Finance Law, or policies and procedures adopted herein, alternative proposals or quotations for goods and services shall be secured by use of written requests for proposals, written requests for quotes, verbal quotations, or any other method of procurement which furthers the purposes set forth in Section 104-b of General Municipal Law.

c. The following methods of procurement will be utilized taking into account which method will best further the purposes of Section 104-b of General Municipal Law and the cost effectiveness of the method.

### **PURCHASE OF LIKE COMMODITIES**

<b>Estimated Amount of Purchase Contract</b>	<b>Method</b>
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and services. Two verbal quotes required.

\$3,000-\$4,999	Purchases may be made by the Department Head or Town Official providing an appropriation has been made in the current year's budget for said goods and services and the Town Board approves. Two written or faxed quotes.
\$5,000-\$19,999.99	Three written quotations / faxed proposals, authorized by board resolution and an appropriation has been made in the current year's budget for said goods and services.
\$20,000 and above	Sealed bids in conformance with General Municipal Law, Section 103, to be awarded by the Town Board.

In determining whether the threshold has been or will be met by the contemplated purchase, past purchases and anticipated future purchases of like goods and services in the calendar year will be taken into consideration. The purchaser shall consult with the Town Supervisor and/or the Town Board.

### **PUBLIC WORKS PROJECTS**

<b>Estimated Amount of Purchase Contract</b>	<b>Method</b>
\$250-\$2,999	Purchases may be made by the Department Head, providing an appropriation has been made in the current year's budget for said public works. Two verbal quotes required.
\$3,000-\$4,999	Minimum of two written or faxed quotes, with award recommendation made by the department head; subject to Town Board approval.
\$5,000-\$19,999.99	Minimum of three written or faxed proposals, with award recommendation made by the department head; subject to Town Board approval.
\$20,000 and above	Sealed bids in conformance with General Municipal Law, Section 103; awarded by the Town Board.

A good faith effort shall be made to obtain the required number of proposals/quotations. If unable to obtain the required number, the purchaser will document the attempt made at obtaining the proposals/quotations. Failure to obtain proposals/quotations shall not be a bar to procurement. In such case procurement may proceed with approval of the Town Board.

a. Written documentation of the actions taken by the person in connection with each such method of procurement will be filed with the department head:

b. The contract for the purchase of goods or services shall be awarded to the lowest responsible vendor/contractor. If the contract is not offered to the lowest responsible vendor/contractor, written justification and documentation setting forth the reason(s) for not awarding the contract to the lowest responsible vendor/contractor shall be submitted to the Supervisor by the person desiring to make the award, and the Supervisor will review the justification and documentation and approve or disapprove the making of said award.

c. No official nor employee shall be interested financially in any contract entered into by the Town, unless s/he is a sole local supplier of needed goods or services (see 'SOLE SOURCE

PURCHASES' below). This also precludes acceptance of gratuities, financial or otherwise, from any supplier of materials or services.

d. Pursuant to General Municipal Law Section 104-b (2)(f), the procurement policy may contain circumstances when, or types of procurements for which, in the sole discretion of the governing body, the solicitation of alternative proposals or quotations would not be in the best interest of the municipality. In the following circumstances, it may not be in the best interests of the Town to solicit quotations or document the basis for not accepting the lowest bid:

### **1. PROFESSIONAL SERVICES**

The individual or company must be chosen based on accountability, reliability, skill, education and training, judgment, and integrity. 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, consider the following:

- (a) are the services subject to state licensing or testing requirements?
- (b) is substantial formal education or training a prerequisite to the performance of the services?
- (c) do the services require a personal relationship between the individual and municipal officials?

Professional or technical services shall include but not be limited to: services of an attorney or physician; technical services or an engineer engaged to prepare plans, maps, and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing, editing, or art work; management of municipality-owned property; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

A Request for Proposals (RFP) to procure professional services should be done so as to hire the most qualified provider at the most reasonable price. Annual RFPs are not required; however, they must be done for any initial contracts exceeding \$5,000. This is not necessarily an annual limit, but the threshold for a specific type of service or project which may span multiple fiscal years. Engagements under \$5,000 do not require a RFP; however, it is expected that departments will exercise due diligence to make sure a competent professional is chosen at a reasonable fee. The department issuing the RFP generally reviews the responses and recommends an appointment.

*RFPs must be reissued every five years at minimum.* Note the contract term would generally be for one year; the policy merely allows the initial RFP to be valid for five years.

In the event a professional appointed in accordance with this policy is unable to provide the services, or if the Town is not satisfied with the services provided, the department may refer back to the most recent RFP files and contact the second and third choices. Upon updating price information, the department may then recommend the appointment of a new professional without going through another RFP. The new appointment will then start the five-year period in which s/he can serve without conducting a new RFP.

**EXCEPTIONS REQUIRING TOWN BOARD APPROVAL:** Regardless of amount: audit services (subject to annual appointment), legal services (subject to recommendation from the Attorney to the Town). Purchased services for less than \$5,000 may be referred to the Town Board for approval at the discretion of the department head and Town Supervisor.

A Request for Qualifications (RFQ) may be appropriate if it is deemed desirable to narrow the scope of a Request for Proposals review to professionals who have been designated as eligible to submit a Request for Proposals, based on an assessment of their expertise. The focus of a Request for Qualifications is solely on a professional's realm of relevant experience, where the Town sets forth the

minimum standards required. A Request for Qualifications does not solicit a proposal on the specific project at hand. Once the professionals have been deemed qualified they can respond to the Town's detailed Request for Proposals.

Proprietary Software: initial decisions to purchase proprietary software should conform to the RFP requirement; however, subsequent purchases of integrated software modules may not be subject to RFP if it is deemed and documented to be contrary to the public interest to deviate from an adopted business platform. All software purchases must be budgeted for and require approval of the Purchasing Agent, who will inform the Town Board of the vendor's name, type of acquisition, and price paid as well as supply documentation supporting the purchase.

HIRING: Annual services less than or equal to \$5,000 for specifically budgeted services may be hired by the Town Supervisor. Annual services greater than \$5,000 for specifically budgeted services, and for non-budgeted services (which require a budget modification) are authorized by the Town Board.

## **2. EMERGENCY PURCHASES**

Section 103(4) of General Municipal Law sets forth an exception to bidding requirements for emergency situations as follows:

"Notwithstanding the provisions of subdivision one of this section, in the case of a situation whereby circumstances affecting public buildings, public 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 public work or the purchase of supplies, material or equipment may be let by the appropriate officer, board or agency of a political subdivision or district therein."

There are three basic statutory criteria to be met to fall within this exception:

1. The situation must arise out of an accident or unforeseen occurrence or condition;
2. Public buildings, public property or the life, health, safety, or property of the town's residents must be affected;
3. The situation must require immediate action.

Due to the nature of this exception, goods or services must be purchased immediately. This does not preclude alternate proposals if time permits. Routine items, which the department has forgotten to maintain in inventory, do not meet these guidelines; nor does a declaration of an emergency which is caused by lack of planning on the department's part, such as a "sudden" emergency arising from the gradual deterioration of a piece of equipment.

The Town Board is empowered to designate an "emergency purchase" or "emergency project," and may waive normal bidding requirements. If, in an emergency situation, a department head deems professional consulting is required immediately to protect the public interest, a professional may be engaged with the written approval of the Town Supervisor. If the scope of work is anticipated to exceed \$10,000 the facts and circumstances of the emergency necessitating the hiring of the consultant without issuing RFPs must be submitted to the Town Board by the account clerk prior to payment.

## **3. SOLE SOURCE PURCHASES**

Competitive bidding proposals are not required under Section 103 of General Municipal Law in situations where there is only one possible source from which to procure required goods and services in the public interest, such as certain patented goods or services or public utility services.

In making these determinations, the department head should be prepared to show, among other things: the unique benefits of the patented item as compared to other items available in the marketplace; that no other item provides substantially equivalent or similar benefits; and, considering the benefits received, the cost of the item is reasonable when compared to conventional items. The NYS Office of the State Comptroller, Division of Municipal Affairs, requires any municipal officers executing sole source documents should be prepared to "factually verify that the goods or services sought may only be obtained from a single source." The Purchasing Agent must verify that the requested item or service is available from only one supplier.

EXCEPTION: LOCAL PROCUREMENTS: In some cases procuring goods / services locally is the fiscally responsible course of action and is allowed, due to the remote location of the Town. Examples: vehicle inspections; miscellaneous nuts, bolts, fittings, lumber etc.; food platters; floral arrangements; and similar.

#### DEPARTMENT RESPONSIBILITIES

1. Expenditures should be planned sufficiently in advance to allow review for best price and/or overall service.
2. Purchase orders are based on information and specifications shown on the requisition form submitted to the Purchasing Agent. When requesting parts for machines or equipment a manufacturer and part number, or model number of the unit the parts are for, should be stated on the requisition.
3. Departments shall plan purchases sufficiently in advance to allow for best price and/or overall service to be obtained.
4. Employees who are involved in their department's procurement process are to familiarize themselves with this policy and procedures.

#### THE BID PROCESS

Competitive bidding is required for purchase of commodities or like commodities with an anticipated value of \$20,000 or more. (Exceptions include auditing and legal services)

A request to advertise for bids must be made to the Town Board before placing any legal notices. The minimum time allowed in the State of New York between the advertising date and the bid opening date is five (5) days. Advertisements for public bids and Requests for Professional Services are published in the designated official town newspaper and on the town's website. Additional media may be authorized by the Town Board.

The Town Clerk or effecting department issues bid or proposal packages to vendors / contractors at the advertised location. Bid or proposal packages may also be mailed First Class. The request for a bid or proposal package must come in writing or by e-mail or fax.

All bid or proposal packages picked up at the Town Clerk's Office are to be recorded.

#### DEVELOPING BID SPECIFICATIONS

1. A department writes a bid using a list of specifications as the criteria against which vendors' bids will be evaluated. The specifications must be absolutely clear. The bid will be awarded to the lowest cost supplier to meet all the department's needs, exactly as defined by the department in the specifications.
2. Departments may not add or delete requirements after the bids are opened. Vendors must be certain they are all considering the same thing.
3. The goal is to have only one possible meaning for each specification listed. Departments may be called upon to justify any requirement as the minimum acceptable to meet their legitimate operational needs.
4. A good specification should:
  - identify minimum requirements;
  - allow for competition; and
  - provide for an equitable award at the lowest possible cost.

##### a. Brand Names

Brand names can be used in a specification; however, a bid will generally specify "brand name or equal" on the solicitation or RFQ. A brand name gives the parties involved an idea of what type and quality of product are required.

## b. Use of Vendor Specifications

1. Only departments are qualified to know exactly what their needs are. Avoid turning the job over to a vendor. Vendors' literature is written to describe and promote their products. It is their job to sell their company's product and it is to their benefit to emphasize the uniqueness of their product both verbally and in their product literature.

2. By copying a vendor's literature rather than writing their own specifications, departments are likely to over-restrict the specifications to the point where only the vendor whose literature has been copied can meet them. It may reduce competition and result in higher costs.

## NON-APPROPRIATION CLAUSE

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the Town for payment under an agreement. The Town will immediately notify the contractor of such occurrence and the agreement shall terminate on the last day of the fiscal period for which appropriations were received, without penalty or expense to the Town of any kind whatsoever.

## BIDDERS' LIST

The Town will maintain lists of vendors for commodities or services. For specifications to be sent to any vendor that vendor must first contact the issuing department by mail, e-mail or fax, requesting that they be sent via regular mail. Any vendor that requests specifications be sent by Federal Express or other overnight mail must pay for this service. No bid or proposal packages will be "faxed" to any vendor under any circumstances.

## BID SECURITY

CAPITAL IMPROVEMENT or PUBLIC WORKS PROJECTS - Five (5) percent of the total bidding contract amount or a fixed dollar amount is required as bid security, in the form of a certified check or bid bond. Bid security will be returned once the required performance bonds have been received and the contracts are fully executed by the Town Supervisor.

## PERFORMANCE BOND

Performance bonds shall be required when bidding capital improvement or public works projects. Bidders are required to submit their performance bonds before or at the time they sign a contract. This bond is to ensure that the bidder performs for the Town between the date of award and the contract completion date.

## PREVAILING WAGES

Prevailing wages consist of pay scales that have been bargained for by the various unions throughout the state and are set by the New York State Department of Labor. Vendors must pay these rates to employees who work on public works projects or in any town building. There is no dollar threshold where these wages do not apply. In having vendors submit quotes, it is extremely important to make sure that they understand that prevailing wages apply for any public works project for the Town, regardless of the cost of the contract.

## ADDENDUMS

1. Only formal addenda can alter advertised bid specifications. When a discrepancy, ambiguity, or omission is revealed, the Town will issue an addendum to clarify the bid requirements. The addendum is sent by fax and/or mail to all vendors that have picked up or were mailed bid packages; and posted on the town's website. The first addendum will be labeled "Addendum 1." Subsequent addendums issued will be sequentially labeled.

2. The town will make every effort to ensure that the appropriate vendors receive addenda.

3. The addendum procedure will also be used to extend the bid date if necessary, to give the vendors / contractors sufficient time to submit a responsible bid.

#### RECEIPT OF BIDS

1. Vendors or contractors must mail, express, or deliver sealed bids to the Town Clerk's Office on or before the bid deadline specified in the legal advertisement. As the bids are received they are to be immediately date- and time-stamped and bid receipt recorded in the Town Clerk Bid/Proposal Log. No bids are accepted after the bid deadline. Those received after the bid deadline will be returned to the sender unopened. No "fax" machine transmission bids will be accepted under any circumstances.

2. At the appointed time the Town Clerk, or his or her designee, will announce the bids to be opened. The bids will be opened and read aloud, and the bids appropriately recorded.

#### BID RECOMMENDATION PROCESS

A copy of all bids received are made and sent to the requesting department for review and a recommendation or rejection of the lowest responsible bidder. The department shall review the package and send a memo of its recommendation or rejection to the Town Board with a copy to the Purchasing Agent (Town Supervisor). If the lowest responsible bidder is not recommended a detailed written explanation from the department head must be attached. The Purchasing Agent will review the package and department recommendation and, if necessary, contact the Attorney to the Town to clear up any legal technicalities; and will approve or disapprove the department's recommendation.

#### BID AWARD PROCESS

The department head must submit the bid package with recommendations to the Town Board for approval. After approval for the contract is granted, the Town Clerk will process any necessary notice of award and the department head will process a purchase order. When the award process is finalized, the entire bid package becomes a permanent file in the Town Clerk's Office.

Nothing in this statement of policies and procedures shall be construed as delegating the power and authority of the Town Board to approve contracts for any purpose other than the procurement of specific goods and services according to the terms of this statement of policies and procedures.

*TOWN OF LAKE PLEASANT*  
PROCUREMENT DOCUMENTATION  
PUBLIC WORKS

DATE: \_\_\_\_\_

JOB DESCRIPTION: \_\_\_\_\_

\$250 - \$2,999 = 2 VERBAL QUOTATIONS REQUIRED

1) \_\_\_\_\_

2) \_\_\_\_\_

\$3,000 - \$4,999 = 2 WRITTEN / FAX QUOTATIONS

1) \_\_\_\_\_

2) \_\_\_\_\_

\$5,000 - \$19,999 = 3 WRITTEN / FAX QUOTATIONS OR REQUEST FOR PROPOSALS RESPONSES

1) \_\_\_\_\_

2) \_\_\_\_\_

3) \_\_\_\_\_

ADVERTISE FOR BIDS OVER \$20,000

*TOWN OF LAKE PLEASANT*  
PROCUREMENT DOCUMENTATION  
GOODS AND SERVICES

DATE: \_\_\_\_\_

DESCRIPTION: \_\_\_\_\_

\$250 - \$2,999 = 2 VERBAL QUOTATIONS REQUIRED

1) \_\_\_\_\_

2) \_\_\_\_\_

\$3,000 - \$4,999 = 2 WRITTEN / FAX QUOTATIONS

1) \_\_\_\_\_

2) \_\_\_\_\_

\$5,000 - \$19,999 = 3 WRITTEN / FAX QUOTATIONS OR REQUEST FOR PROPOSALS RESPONSES

1) \_\_\_\_\_

2) \_\_\_\_\_

3) \_\_\_\_\_

# SOLE SOURCE JUSTIFICATION

A sole source procurement is justified when there is only one good or service that can reasonably meet the need and there is only one vendor who can provide the good or service without incurring additional expense. Examples: vehicle inspections by the only service garage in town rather than driving out of town to a less expensive alternative; miscellaneous hardware from the only hardware store in town; etc.

Department \_\_\_\_\_

Contact Name \_\_\_\_\_

Phone # \_\_\_\_\_

Requisition # \_\_\_\_\_

Describe the products and/or services to be procured:

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Detail how this/these product(s) meet(s) your department's needs. Define the unique benefits to the department of the item as compared to other products in the marketplace. Show that no other product provides substantially equivalent or similar benefits, and that, considering the benefits received, the cost of the item is reasonable in comparison to other available products. Attach a separate page if needed.

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Vendor Name \_\_\_\_\_

Vendor Address \_\_\_\_\_

Phone \_\_\_\_\_

Fax \_\_\_\_\_

Product Needed By \_\_\_\_\_

Estimated Total Dollars for this procurement \$ \_\_\_\_\_

What is the basis for identifying this vendor as a sole source? Check any that apply.

The vendor is the manufacturer of the product and has no distributors. (Attach manufacturer's letter as documentation)

The vendor is the only reseller of the manufacturer's product in the geographic region. (Attach manufacturer's letter as documentation)

Item to be purchased is a supply for equipment that is under warranty, and use of any product other than specified will void the warranty. (Attach copy of warranty with such requirement highlighted)

Product is patented. (Provide patent number and patent documentation)

Item is proprietary and is additional product or software which must work with an existing system. (Provide letter of documentation from system manufacturer)

Product has been standardized for use in the Town through the Town Board process. (Attach copy of resolution)

Other (Provide a statement on a separate page with detailed documentation)

Department Head or Designee: \_\_\_\_\_

Signature: \_\_\_\_\_

### **RECORD OF REVISIONS**

original policy adopted March 16, 1992

major overhaul adopted November 4, 2019