

## **ALBANY COUNTY PROCUREMENT POLICY**

WHEREAS, Section 104-b of the General Municipal Law (G.M.L.), requires every municipality to adopt internal policies and procedure governing all procurement of goods and services not subject to the bidding requirements of GML, Section 103 or any other law, and

WHEREAS, Comments have been solicited from those officers of the County of Albany involved with procurement, now, therefore, be it

RESOLVED, That the County of Albany does hereby adopt the following procurement policies and procedures:

Every prospective purchase of goods or services shall be evaluated to determine the applicability of GML, Section 103. Every county officer, board, department head or other personnel with the requisite purchasing authority (hereinafter Purchasing Department) shall estimate the cumulative amount of the items of supply or equipment needed in a given fiscal year. That estimate shall include the canvass of other county department and past history to determine the likely yearly value of the commodity to be acquired. The information gathered and conclusions reached shall be documented and kept with the file or other documentation supporting the purchase activity.

Purchases of Commodities, Equipment or Goods:

\$ .00 - \$999.99	1 documented telephone price inquiry or written quote
\$1,000.00 - \$3,999.99	Minimum of 2 vendor submitted written, e-mail or facsimile price quotes
\$4,000.00 - \$19,999.99	Minimum of 3 vendor submitted written, e-mail or facsimile price quotes
\$20,000.00 and over	Sealed Bids in conformance with General Municipal Law, Sec. 103

Purchases for Public Works Projects/Contracts:

\$ .00 - \$4,999.99	1 documented telephone price inquiry, e-mail, or facsimile price quote
\$5,000.00 - \$34,999.99	Minimum of 3 vendor price requests with written, e-mail or facsimile price quotes
\$35,000.00 and over	Sealed Bids in conformance with General Municipal Law, Sec. 103

### 3. PROFESSIONAL SERVICES AND CONSULTANTS (RFP):

A.	\$ .00 - \$ 9,999.99	Minimum of 1 vendor written price quote with award recommendation being made by the Department Head, and with the approval of the Purchasing Agent and the award being made by County Executive
B.	\$ 10,000 - \$49,999.99	Minimum of three (3) vendor written price quotes with the award recommendation being made by the Department Head, and with the approval of the Purchasing Agent and award being made by the County Executive
C.	\$50,000 and over	Written <u>Request for Proposal</u> with award recommendation by the Department Head with approval from the Purchasing Agent

The Albany County Purchasing Agent shall comply with the open and fair procedures, established by the Albany County Procurement Policy, for the awarding of public contracts for goods and services. The Purchasing Agent shall establish the necessary reports and statistics to ensure that proper implementation of the policies and accountability requirements are met to provide assurance that favoritism or fraud does not occur.

#### EXCEPTIONS

“A good faith effort shall be made to obtain the required number of proposals or Quotations. If the Purchasing Department is unable to obtain the required number of proposals or quotations, the Purchasing Department shall document the attempt made at obtaining the proposals. In no event shall the inability to obtain the Proposals or quotes be a bar to the procurement.

“Except when directed by the Legislature, no solicitation of written proposals or quotations shall be required under the following circumstances:

- Emergencies;
- Sole source situations;
- Goods purchased from agencies for the blind or severely handicapped;
- Goods purchased from correctional facilities;
- Goods or services purchased from another government agency or public jurisdiction within New York State that provides goods or services to municipal governments;
- Goods purchased from surplus government auction;

- Goods or services purchased for less than \$999.99;
- Mandates requiring Albany County to contract with all qualified providers at a rate established by the federal government or New York State;
- Contracts let by the United States Government (GSA contracts);
- Contracts let by any state or county or political subdivision or district therein if such contract was let in a manner that constitutes competitive bidding consistent with state law and made available for use by other governmental entities;
- Albany County contracts with all qualified and willing providers of a defined social service program under the following departments: Aging, Health, Mental Health, Department for Children Youth and Families or Social Services. Examples of such programs are Early Intervention and the Committee for Preschool Special Education under the New York Department of Education;
- New York State mandates for the provision of a specific service at a pre-established rate and requirements that such service be offered via a state-qualified or state-licensed provider such as Cornell Cooperative Extension and Hudson Valley Community College;
- Contracts as part of a grant process where the contractor is identified as the provider in the grant application;
- Physicians

## **PURCHASES FROM OTHER THAN THE LOWEST RESPONSIBLE DOLLAR OFFERER**

General Municipal Law Section 104-b, Subdivision 2 paragraph (e) requires that the policies and procedures "require justification and documentation of any contract awarded to other than the lowest responsible dollar offerer, setting forth the reasons such an award furthers the purpose of this section."

Any time a purchase is made from other than the lowest responsible vendor or contractor submitting a quotation or proposal, there must be justification and documentation of the reason why the purchase was in the best interest of the County and otherwise further the purposes of GML Section 104-b.

For example, if a vendor submitting the lowest proposal has a history of not making deliveries on time or of delivering goods of inferior quality, such facts might be justification for taking other than the lowest offer, but such decision must be documented with facts and the vendor must be given an opportunity to be heard as to the objection prior to awarding the contract to a different vendor.

## **WHERE FORMAL BIDDING PROCEDURES ARE NOT REQUIRED BY LAWS OR REGULATION, QUOTATIONS ARE SOLICITED**

## **PROFESSIONAL SERVICES AND CONSULTANTS (QUALIFICATION BASED SELECTION)**

As a public owner, Albany County has the right to choose any selection process for professional services, unless restricted by applicable statute. NYS Finance Law, Section 136a, requires all State agencies to procure professional architectural engineering and surveying services using Qualification Based Selection (QBS). Federally funded projects also require utilization of the QBS process for the procurement of professional architectural, engineering and surveying services. NYS General Municipal Law, Section 104-b acknowledges that some services are not best procured by the competitive bid method in that it allows the latitude or option for local governments to adopt separate procurement procedures such as QBS.

Therefore, notwithstanding any previous requirements, in those instances when Albany County receives Federal and State funds to procure Professional Design/Surveying Services, QBS shall be an exception to the RFP process. When utilizing QBS, the County will establish evaluation criteria, solicit statements of qualifications from interested firms, develop a short list of 3 to 5 firms, investigate references, jobs, invite for oral interviews, interview and rank the firms, establish contract terms, ask for a fee proposal and, if agreeable, enter into a formal contract.

The QBS format only applies to services anticipated to exceed \$25,000.00

## **PROCUREMENT CARD PURCHASES**

Albany County recognizes that the use of Procurement Cards is a practical alternative to the use of purchase orders or petty cash for high-volume, low-value purchases. The purpose of the Procurement Card program shall be to streamline and simplify the requisitioning, purchasing and payment process for small dollar transactions.

Therefore, the Albany County Division of Purchasing, after consultation with the County Executive, County Comptroller and Commissioner of Management and Budget, is authorized to implement policies and procedures for the use of Procurement Cards for the purchase of goods or services. Such program shall be designed to shorten the approval process and reduce the paperwork or procurement procedures such as purchase orders, petty cash, check requests and expense reimbursements. Notwithstanding this authority, such policies and procedures must include the following provisions:

1. Each transaction shall be limited to \$250.00. This limit may only be exceeded with prior written approval of the Purchasing Agent or his/her designee. The limit may also be exceeded when used for approved out-of-County travel; however, the limit may only be exceeded for airplane fares, vehicle rental, and other actual travel expenses.
2. Procurement Card(s) may not be used for the following:
  - A. Personal purchases of any kind;
  - B. Cash advances;
  - C. Items requiring technical review or subject to external approval (such as approval of computer equipment purchases);

- D. Items available through Central Supply;
  - E. Travel expenses (except as otherwise noted).
3. Each department which requests Procurement Card(s) must provide:
- A. Written documentation of how each card will be used;
  - B. An estimate of any time and/or monetary savings generated through the use of each Procurement Card(s);
  - C. Written description of the types of transactions that will be made with each Procurement Card(s);
  - D. Identification of the employee who will be authorized to use each Procurement Card and an explanation as to why such employee should be authorized to use a Procurement Card.

Such materials and information must be provided for each Procurement Card issued to a department.

4. The Division of Purchasing shall also develop internal controls for each department to ensure proper use of each Procurement Card(s). These internal controls shall include the following:
- A. Dollar limits on each transactions (not to exceed \$250);
  - B. Total monthly spending limits;
  - C. The number of transactions allowed per specified time period (limit may be daily, weekly or monthly);
  - D. Security measures to prevent theft, loss or unauthorized use, including procedures for obtaining, safeguarding and returning cards;
  - E. A system that tracks expenditures as they occur. Such system must give up-to-date information on purchases and funds expended.
  - F. The types of goods and services that are not authorized for Procurement Card purchases.

Such materials and information must be provided for each Procurement Card issued to a department.

- 5. The issuance of any Procurement Card(s) to a department must be approved by the Commissioner of Management and Budget and the Purchasing Agent.
- 6. Prior to the issuance of any Procurement Cards, Commissioner of Management and Budget and the Purchasing Agent shall determine the maximum number of Procurement Cards that may be issued to each department and the maximum number of Procurement Cards that may be issued.
- 7. Procurement Card(s) must be kept in a secure (locked) location when not in use.
- 8. Only one employee shall be authorized to use each Procurement Card. Such issuance to a specific employee must be approved by the employee's Department Head and the Purchasing Agent. Any unauthorized purchases made with a Procurement Card shall be the responsibility of said employee. Said employee must sign an acknowledgment and disclosure form prior to receiving a Procurement Card.
- 9. All Procurement Card purchases must receive prior approval by the employee's Department Head or his or her designee(s).

10. Any misuse of the Procurement Card or misrepresentation while using a Procurement Card shall require the immediate suspension of all Procurement Card privileges by the relevant department. Any misuse of the Procurement Card or misrepresentation while using a Procurement Card shall be grounds for discipline up to and including termination of employment.
11. Each employee who is authorized to use a Procurement Card must reconcile their Procurement Card statement and purchases at least twice each month in order to verify that all charges are proper and the correct amounts have been charged. The Purchasing Agent shall determine the dates when such reconciliation statements must be submitted. The employee who is authorized to use a Procurement Card and his/her Department Head or his or her designee shall sign the reconciliation statement to indicate approval and that all charges are proper and the correct amounts have been charged. Such reconciliation must include receipts for each use of the Procurement Card and a brief description of the good or service purchased. Original receipts, invoices and credit slips from each purchase must be provided for reconciliation and audits. Photocopies shall not be acceptable. These documents should be attached to the appropriate monthly statement and retained for review. An approved out-of-County travel form must also accompany any receipts for expenses incurred during out-of- County travel. Upon request, an additional detailed and written explanation must be provided for any use of a Procurement Card.
12. It shall be the responsibility of each employee who is authorized to use a Procurement Card to contact the vendor and/or Procurement Card issuer directly regarding any discrepancies between the receipt and statement. The Purchasing Agent and Commissioner of Management and Budget must be notified of any discrepancies.
13. The Department Head and/or the Purchasing Agent may suspend or revoke the privilege of any employee to use a Procurement Card at any time. Further, the Purchasing Agent, with just cause, may suspend the privilege of Procurement Card use for any department. For the purposes of this program, the term, "just cause" includes, but is not limited to, failure to comply with procedures, policies and guidelines regarding the use of Procurement Card(s).
14. The Purchasing Agent shall conduct a periodic review of each Procurement Card and supporting documentation and departmental procedures on a continuous basis to ensure compliance. The Purchasing Agent shall, after consultation with the County Comptroller and Commissioner of Management and Budget, develop and promulgate the practices and procedures for conducting these reviews. Failure to comply or cooperate with an audit may result in the suspension or revocation of the privilege of any employee or department to use Procurement Card(s).
15. In addition to the provisions contained herein and those implemented by the Purchasing Agent, a Department Head may implement additional rules regarding the use of Procurement Cards. Such additional rules shall not supersede those policies and procedures implemented by the Purchasing Agent or contained herein.

## **E-PROCUREMENT**

| The Purchasing Division participates in the ESPG (Empire State Purchasing Group) e-procurement system. This system provides one centralized bidding and registration system for

vendors as a single point of contact with broader access to new business opportunities throughout our community. This new system, developed in conjunction with a local company, BidNet, allows the County and other local municipalities to post invitations to bid, informal quotes, request for proposals, construction notices, addenda and awards all on one centralized system. This type of system will save County taxpayers money, expand economic opportunities for businesses throughout the County, reduce time spent acquiring goods, and improve the customer service levels of the County purchasing function.

## **USE OF PURCHASE ORDERS INSTEAD OF CONTRACTS**

A contract should be used in all instances; however, a purchase order may be used in place of a contract for purchases of basic commodities, equipment or goods.

All professional services and consultants require a contract. Notwithstanding this requirement, a purchase order may be used for professional services and consultants when the price does not exceed \$19,999.99 and at least two of the following exceptions exist: (1) there is an immediate threat or danger to the health and safety of employees and/or citizens; (2) the service is required to respond to a County emergency; or, (3) the service is required to comply with the Americans With Disabilities Act or other law, rule or regulation intended to protect employees in the workplace.

## **ACCEPTANCE OF ELECTRONIC BIDS**

Albany County shall allow Bidders to submit bids electronically pursuant to the dictates of General Municipal Law § 103 as amended by L 2003, ch 62, Part X, §§ 4,5 and the Rules and Regulations governing such bids (including 9 NYCRR §540). Electronic bidders are presumed to understand and comply with their obligations pursuant to these laws and regulations as amended.

The County shall not be held responsible for any problems caused by the receiving device that interrupt, delay or prevent receipt of such electronic bid in a timely fashion or by a failure of the electronic bidder to meet its obligations under Federal, State or local law.

To ensure receipt of an electronic bid, bidders are strongly advised to confirm receipt by the Department of Purchasing.

## **SALE OF COUNTY SURPLUS PERSONAL PROPERTY**

Upon a Department Head making the determination that an item or items of personal property are no longer necessary for public use, the Purchasing Agent may utilize an electronic auctioning service, eBay or equivalent service provider, to dispose of said property without notification of the official publications of the County.

**LOCAL LAW NO. "F" FOR 2013 – AUTHORIZING THE AWARD OF PURCHASE CONTRACTS ON THE BASIS OF BEST VALUE CRITERIA PURSUANT TO GENERAL MUNICIPAL AND STATE FINANCE LAW.**

## **PROCEDURES FOR FEDERAL GRANT ADMINISTRATION REQUIREMENTS**

### **Procurement Standards**

Albany County does not have a centralized grants department, therefore it is the responsibility of each department obtaining a grant to administer, and be familiar with, all grant documents and requirements. If it is a Federal Grant, the department should immediately notify the Albany County Comptroller's Office, and complete the Single Audit forms sent by the Comptroller's Office every March for inclusion in the County's Single Audit. For purposes of this policy Department Head applies to the individual within a given department who will be responsible for the grant.

### **Uniform Guidance Compliance Supplement – General Information**

The following financial policies have been separately reviewed and approved by the Albany County Legislature. These policies are incorporated into this document by reference. All of the policies below are applicable to Federal grants where appropriate:

Albany County Procurement Policy

Albany County Code of Ethics and Financial Disclosure Law (Local Law No. 8 1992)

Affirmative Action Policy

### **Uniform Guidance Compliance – Procurement Standards**

The type of purchase procedures required depends on the cost of the item(s) being purchased.

**Note, the County's procurement policy is more restrictive than the federal purchase methods below, districts must always follow the most restrictive policy.**

***Sealed Bids (Formal Advertising):*** For purchases over \$150,000 bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the following conditions apply:

A complete, adequate, and realistic specification or purchase description is available;

- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;



- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- A firm fixed price contract award must be made in writing to the lowest responsive and responsible bidder.

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

***Competitive Proposals:*** The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

If this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- Proposals must be solicited from an adequate number of qualified sources; and
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The County may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby proposers' qualifications are evaluated and the most qualified proposer is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

***Contract/Price Analysis:*** The County performs a cost or price analysis in connection with every procurement action in excess of \$150,000, including contract modifications. 2 C.F.R. § 200.323(a). A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the Department Head must come to an independent estimate prior to receiving bids or proposals. 2 C.F.R. § 200.323(a).

When performing a cost analysis, the Department Head negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. 2 C.F.R. § 200.323(b).

The cost plus a percentage of cost and percentage of construction cost methods of contracting must NOT be used.

### **Noncompetitive Proposals (Sole Sourcing)**

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the County; or
- After solicitation of a number of sources, competition is determined inadequate.

### **Full and Open Competition**

All procurement transactions shall be conducted in a manner providing full and open competition consistent with 2 C.F.R § 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

### **Solicitation Language**

The County shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. 2 C.F.R § 200.319(c).

### **Geographical Preferences Prohibited**

The County shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

### **Prequalified Lists**

The County shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the County must not preclude potential bidders from qualifying during the solicitation period.

#### **Full and Open Competition**

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 C.F.R § 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

#### **Avoiding Acquisition of Unnecessary or Duplicative Items**

The County shall avoid the acquisition of unnecessary or duplicative items. Additionally, consideration is given to consolidating or breaking out procurements to obtain a more economical purchase. And, where appropriate, an analysis must be made of leases versus purchase alternatives, and another other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with federal funds.

#### **Use of Intergovernmental Agreements**

To foster greater economy and efficiency, the County enters into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

#### **Use of Federal Excess and Surplus Property**

The County considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

#### **Debarment and Suspension**

The County awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The County may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000 for commodities, and \$35,000 for public works the County verifies that the vendor with whom the County intends to do business with is not excluded or disqualified. 2 C.F.R. Part 200, Appendix II(1) and 2 C.F.R. §§ 180.220 and 180.300. This is done by the Department Head by checking on Sam.gov and by completing the Vendor Responsibility Questionnaire.

#### **Maintenance of Procurement Records**

The County shall maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the

contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred (to be supplied by the Department Head, as described above).

### **Settlements of Issues Arising Out of Procurements**

The County alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the County of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

### **Protest Procedures to Resolve Dispute**

The County maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

### **Standards of Conduct**

In accordance with 2 C.F.R. §200.18(c)(1), the County maintains the following standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the County may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the gift is an unsolicited item of nominal value.

### **Bonding requirements §200.325**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the County shall require:

1. A bid guarantee from each bidder equivalent to five percent of the bid price.
2. A performance bond on the part of the contractor for 100 percent of the contract price.
3. A payment bond on the part of the contractor for 100 percent of the contract price.

### **Contract provisions §200.326**

The County's contracts will contain the applicable provisions described in Appendix II to Part 200.

