



PROCUREMENT POLICY

TOWN OF AMHERST NEW YORK

January 2024

Adopted 1/2/2024, Resolution 2024-40

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PURPOSE

The purpose of the procurement policy is to safeguard the taxpayers of the Town of Amherst by assuring that competition is sought in a reasonable, cost-effective manner for all procurements where practical and required by NYS General Municipal Law (GML) §103. Goods and services that are not subject to competitive bidding by NYS law must be procured in a manner that assures the prudent and economical use of public funding, facilitates the acquisition of goods and services of the highest quality at the lowest possible cost, and guards against favoritism, improvidence, extravagance, fraud and corruption (GML §104-b).

This policy supersedes any and all prior procurement policies, procedures and Town Board resolutions regarding procurement. All future Town Board resolutions that affect this policy must include revisions to the policy for simultaneous approval.

AUTHORITY AND DUTIES

Principal Procurement Official

Except as otherwise provided herein, the Director of Finance shall serve as the principal public procurement official for the Town of Amherst, and shall be responsible for the oversight of the procurement of supplies, services, equipment, and public works projects in accordance with this policy, as well as oversight of the auction/disposal of surplus supplies and equipment.

Departmental Authority

Department Heads (or their designee) have the authority to perform the purchasing function for their department. A listing of municipal officials responsible for purchasing decisions is attached in Appendix A. If a Department Head has designated an employee in their department to assist with purchasing, a listing of such employees should be given to the Contract Compliance and Administration Department. Contract Compliance should be notified when this list is modified.

ANNUAL REVIEW

This policy shall be reviewed on an annual basis, and placed on the agenda for approval by the Amherst Town Board at their Reorganization meeting, held in January of each year.

The Director of Finance shall be responsible for initiating the annual review process. Comments concerning the policies and procedures shall be solicited from officers of the Town involved in the procurement process prior to the submittal to the Town Board.

GENERAL PROCUREMENT CATEGORIES

Most procurements generally fit into one of the categories listed in the following table. This table identifies whether these categories are within the requirements of General Municipal Law (GML) Section 103, or within local procurement policies and procedures required by GML Section 104-b.

See Town of Amherst Local Procurement Chart on page 7.

	Subject to Competitive Bidding (Section 103)	Local Policies and Procedures (Section 104-b)
Purchase Contracts and Contracts for Public Work if No Other Exception Applies		
Purchase Contracts – In excess of the \$20,000 Threshold	X	
Purchase Contracts – Below the \$20,000 Threshold		X
Contracts for Public Work – In excess of the \$35,000 Threshold	X	
Contracts for Public Work – Below the \$35,000 Threshold		X
Procurements Exempt from the Requirements of section 103 and the Quotations/Proposals Requirement of section 104-b		
Preferred Sources (State Finance Law, section 162; Correction Law, sections 184, 186)		X
State Contracts; certain Federal contracts (GML, section 104)		X
County Contracts (GML, section 103[3])		X
Additional exemptions provided for in local policies and procedures (e.g., “piggybacking” on certain other government contracts in accordance with the prerequisites in GML, section 103 [16]); other local exemptions).		X
Procurements Exempt from section 103		
Emergency (GML, section 103 [4])		X
Sole Source		X
Professional Service		X
True Leases		X
Insurance		X
Surplus/Second-hand Materials, Supplies, Equipment from Certain Other Governments (GML, section 103 [6])		X

LAWS GOVERNING PROCUREMENT

NYS law allows various methods of procurement to be available to municipalities.

1. NYS GML §103

GML §103 requires advertisement for sealed bids for all contracts for public work involving an expenditure of more than \$35,000 and all purchase contracts involving an expenditure of more than \$20,000. Such contracts shall be awarded to the lowest responsible bidder, provided, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law) may be awarded on the basis of best value, as defined in State Finance Law §163. Chapter 40 of the Amherst Town Code allows purchasing using Best Value for piggyback contracts only. See the Amherst Town Code for more information.

A) Purchase Contract v. Public Works Contract

The Office of the State Comptroller has issued opinions that the term “purchase contract” applies to the procurement of commodities (e.g. equipment, materials, supplies and some services), while the term “contract for public work” applies to contracts for services, labor and construction. A public works contract is defined as an improvement to a public facility in which the majority of the costs are labor. In many instances, contracts involve both goods and services, and it is difficult to determine which bid limit to apply. Each procurement must be reviewed on a case-by-case basis and a determination made as to what kind of contract is involved. As a general rule, if the contract involves a substantial amount of labor such that it is the focal point and the acquisition of materials is incidental, it will be considered a contract for public work. Conversely, if services or labor is only minimal or incidental to the acquisition of goods, it is considered a purchase contract. For example, a contract for interior painting of a building involves both material (paint) and labor (painting). In most instances, the labor component of the contract will be predominant making it a contract for public work. In contrast, replacing a boiler or furnace, while involving both equipment (the boiler) and labor (installation) will, in most instances, consist primarily of a charge for the equipment, making it a purchase contract. The purchaser or initiating department should make this determination. If you are unsure, please contact Contract Compliance and Administration for assistance.

B) Aggregation

In determining thresholds, consideration must be taken as to the aggregate amount reasonably expected to be expended for “all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase”, whether from a single vendor or multiple vendors. Please note this is a rolling period and should be reviewed each time a purchase is made. Past history should also be taken into consideration when evaluating annual costs associated with the purchase of a commodity or service. If the bid limit is anticipated to be exceeded, competitive bidding shall be used. The Director of Finance shall determine aggregation rules and application to the annual value of a commodity based on the best information available at that time. If it is determined that a procurement is required that was not initially included in an aggregated contract, the item(s) may be quoted using one of the methods below and the item(s) must be included in the next bid or contract for that commodity or group of items.

2. NYS GML §104-b

GML §104-b states that goods and services which are not required by law to be procured pursuant to competitive bidding must be procured in a manner so as to assure the prudent and economical use of public moneys in the best interests of the taxpayers, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption. It requires, among other things, that the governing board of every political subdivision adopts, by resolution, internal policies and procedures governing all procurement of goods and services which are not required to be made pursuant to competitive bidding requirements of GML §103 or any other general, special or local law, and that the policies and procedures be reviewed on an annual basis.

3. EXEMPTIONS

A) Preferred Sources

In some situations, municipalities are required to purchase certain goods and services from providers having “preferred source” status, in order to achieve “special social and economic goals”. These purchases are not subject to competitive procurement requirements. Preferred sources include: Correctional Industries Program of the Dept. of Corrections and Community Supervisions (Corcraft); approved qualified, nonprofit agencies for the blind; approved special employment programs for mentally ill persons; approved qualified charitable nonprofit agencies for other severely disabled persons; and certain approved qualified veteran’s workshops. An assessment of preferred vendor availability should be made before a commodity or service is considered for competitive bidding or alternative procurement procedures. More information can be found at the NYS Office of General Services (OGS).

B) State Contracts, Certain Federal Contracts – GML §104

Certain State contracts are made available to local governments and school districts through the New York State Office of General Services (OGS). Purchases may be made at the same prices, under the same terms as the State. The majority of State contracts can be used as soon as they are awarded. Orders are placed directly with the contractors listed, using a purchase order.

Departments must follow the recommended procedures for State agencies for each contract (e.g. if over \$50,000, multiple quotes should be obtained; requirement to use mini-bids in certain instances; etc.).

Departments are able and encouraged to negotiate a lower price from the NYS OGS contract holder. In addition, pursuant to State Finance Law §163(3)(a)(v), OGS centralized commodities contracts that contain a clause known as “OGS or Less” may allow an agency to obtain needed commodities from a non-contract vendor in order to take advantage of non-contract savings that may develop in the marketplace. The contractor holding the State contract must first be given an opportunity to meet the lower price. Please see NYS Procurement guidelines or contact Contract Compliance and Administration for assistance.

Federal contracts may be used from certain Federal General Service Administration (GSA) contracts. These include information technology and telecommunications items; certain equipment and activities through the US Department of Defense; alarm and signal systems; firefighting and rescue equipment;

law enforcement and security equipment; certain products and services to facilitate recovery from major disasters; etc. For purchases of \$3,000 or more, you must follow Federal Acquisition Regulations, which require competitive pricing among the GSA contractors. This can be accomplished by using eBuy on the GSA site. Please see Federal procurement guidelines.

C) County Contracts – GML §103(3)

GML §103(3) expressly permits a political subdivision to make purchases of materials, equipment or supplies, or to contract for services other than those subject to Article 9 of the Labor Law, when available, through the county in which the political subdivision or district is located or through any county within the state subject to the rules established pursuant to Subdivision 2 of Section 408-a of the County Law. Prior to making such purchases or contracts, the officer, board or agency shall consider whether such contracts will result in cost savings after all factors, including charges for service, material, and delivery, have been considered.

D) Piggybacking

Local governments may “piggyback” on contracts that have been extended to local governments and school districts by certain other governments. Use of these contracts constitutes an exception to the competitive bidding and offering requirements of the law. This exemption authorizes political subdivisions to purchase apparatus, materials, equipment or supplies, and to contract for services related to the installation, maintenance, or repair of these items, through the use of contracts let by the United States or any agency thereof, any State or any other political subdivision or district therein. Three prerequisites must be met:

- 1) The contract must have been let by the United States or any other 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 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, as well as 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 may also 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 in a manner that constitutes competitive bidding “consistent with state law.” 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.

LOCAL PROCUREMENT CHART

The following procurement requirements shall apply to all Town of Amherst purchases.

	Verbal Quotes		Written Quotes			Bid	RFP/ RFQ	Other
	1	2	1	2	3			
Purchase Contracts								
\$5,000 or less	X							
\$5,001 - \$10,000				X				
\$10,001 - \$20,000					X			
Over \$20,000 (GML §103)						X		
IT & Consumer Electronics**								X
Public Works Contracts								
\$7,500 or less	X							
\$7,501 - \$15,000				X				
\$15,001 - \$35,000					X			
Over \$35,000 (GML 103)						X		
Emergency								X
Sole Source								X
Professional Services								
\$50,000 or less (requires TB approval)			X					
Over \$50,000							X	
True Leases			X					
Insurance					X			
Second Hand Equipment								
\$20,000 or less	X							
Over \$20,000 (from other gov. only) (OSC Opinion 89-13)								X

***All information technology (IT) related products (hardware and software) and consumer electronics in an amount over \$500 require the written approval of the Director of Information Technology (or designee) for suitability and compatibility with existing or planned IT infrastructure, in addition to the Purchase Contracts requirements above. Documentation of approval should be submitted to the Comptroller's Office with purchase orders. Police or SCADA networks are excluded from this requirement.*

LOCAL PROCUREMENT REQUIREMENTS

Every purchase shall be made using the requirements in the Town of Amherst Procurement Chart. Each purchase 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 will be made to determine whether it is known, or can reasonably be expected, that the aggregate amount to be spent on the item of supply or service is not subject to competitive bidding, taking into account past purchases and the aggregate amount to be spent in a year.

When bidding is not required under GML §103, all goods and services will be secured by use of written requests for proposals/qualifications, written quotations, verbal quotations, or any other method that assures the goods will be purchased at the lowest price and that favoritism will be avoided.

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 no event shall the failure to obtain the proposals be a bar to the procurement, so long as the good faith effort has been made.

Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offer. The documentation will include an explanation of how the award will achieve the savings or how the offer was not responsible. A determination that the offer is not responsible shall be made by the purchasing department in conjunction with Contract Compliance.

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

1) Purchase Contracts Under \$5,000 / Public Works Contracts Under \$7,500

The time and documentation required to purchase through this policy may be costlier than the item itself and may therefore not be in the best interests of the taxpayer. In addition, it is not likely that such de Minimis contracts would be awarded based on favoritism. However, this does not relieve the individual making the purchase from responsibility for monitoring other sources of the same product.

2) Emergency Purchases

Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety or welfare of the residents. This section does not preclude alternate proposals if time permits.

There are three basic statutory criteria to be met in order to fall within this exception. These are: 1) that the situation arises out of an accident or other unforeseen occurrence or condition; 2) the circumstances affect public buildings, public property, or life, health, safety or property of the political subdivision's residents; and 3) the situation requires immediate action which cannot await competitive bidding.

Generally, there must be a present, immediate and existing condition which is creating an imminent threat or danger and which requires such immediate action that a further delay to comply with competitive bidding requirements is so detrimental to the public interest that it overcomes the strong public policy in

favor of bidding. Further, because the emergency must arrive out of an accident or unforeseen occurrence, it is doubtful a local government may invoke the emergency exception in a situation in which the result of inaction or dilatory behavior on the part of local officials and which, therefore, could have been foreseen in time to advertise for bids.

There are certain emergency occurrences which may be foreseeable. In these instances, each department should, one time per year, solicit bids from appropriate providers to be selected to be the exclusive “on call” provider for recurring emergencies.

Even when a governing board passes a resolution that a public emergency exists, the public interest dictates that purchases are made at the lowest possible costs, seeking competition by informal solicitation of quotes or otherwise, to the extent practical under the circumstances.

The department head must make every reasonable attempt to obtain approval from the Supervisor prior to making the purchase. An Emergency Purchase Documentation Form must be completed to document the emergency purchase (see Exhibit B). This form must be submitted to the Town Board at the first work session following the date of the Emergency purchase. The Town Board, as soon as reasonably possible after notification, shall pass a resolution affirming the need for the purchase.

3) Sole Source

There is no requirement for competitive bidding when a good or service is available only from one possible source. To qualify as a sole source exception, the acquisition must be in the public interest and available only from one source, for which there is no equivalent. To service the public interest, there must be unique benefits as compared to a different good or service, and no other good or service would provide substantially similar benefits. The cost must be reasonable when considering the benefit. The sole source exception cannot be used simply because it is anticipated that only one bid will be submitted. Use of a sole source vendor requires Town Board approval.

4) Professional Services

This applies to professional services or services requiring a special or technical skill, training or expertise. The individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgement, integrity and moral worth. These qualifications are not necessarily found in the individual or company that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

Professional services up to \$50,000 require approval by the Town Board, but do not require an RFP or RFQ process. In determining whether a service fits into this category, the Town Board shall take into consideration the following guidelines: a) whether the services are subject to State licensing or testing requirements; b) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and c) whether the services require a personal relationship between the individual and municipal officials. Professional or technical services shall include but not be limited to the following: services of an attorney; services of a physician; technical services of 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 or auditor; investment management services; appraisal services; printing services involving extensive writing, editing or art work; management of municipally owned property; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

Professional services over \$50,000 must be solicited and evaluated using a Request for Proposals (RFP) or Request for Qualifications (RFQ). RFPs typically use cost as one factor in the evaluation process. RFQs typically require that pricing be submitted in a separate sealed envelope. Proposers are then evaluated based on their qualifications only, and pricing is negotiated after the preferred vendor is selected.

5) True Leases

Competitive bidding is not required when leasing real property or equipment. However, the lease must be an actual lease and a contract may not be called a lease to circumvent the competitive bidding process. In addition, the exception is not allowable for a lease-purchase agreement, in which the item being leased will be owned by the municipality at the end of the lease term.

6) Insurance

The purchase of insurance is exempt from bidding requirements. However, it is in the best interest of the taxpayers to solicit multiple quotations prior to binding insurance.

7) Second Hand Equipment

If alternate proposals are required, the Town may be precluded from purchasing surplus and second-hand goods at auctions or through specific advertised sources where the best prices are usually obtained. It is also difficult to try to compare prices of used goods and a lower price may indicate an older product. Each piece of equipment shall be treated as an individual purchase, and aggregation shall not apply. Purchases of an individual piece of equipment with a cost over \$20,000 may only be obtained from another governmental entity, unless formally bid (OSC Opinion 89-13).

REQUIRED DOCUMENTATION

Documentation is required of each action taken in connection with procurement. This includes Town Board resolutions, memoranda, written quotes, telephone logs (for verbal quotes), requests for proposals, proposals, contracts (i.e. copies of State/County contracts), and any other appropriate form of documentation. See Appendix C, Verbal Quote Sheet, which can be used for documentation. If there is any question on what form of documentation is required, the Contract Compliance and Administration Department should be consulted.

MWBE REQUIREMENTS

Chapter 32 of the Town Code defines the requirement for the commitment of the Town of Amherst MBE/WBE Utilization Commitment Act for expenditures over \$50,000 for purchase contracts, and over \$100,000 for public works contracts. Please see the Town Code for more information.

PURCHASE OF VEHICLES/EQUIPMENT

Purchases of passenger vehicles (A/C #2200), trucks/tractors (A/C #2250) and other equipment (A/C #2600) shall be placed on the Town Board agenda for approval prior to purchase.

APPENDIX A

MUNICIPAL OFFICIALS
RESPONSIBLE FOR PURCHASING DECISIONS

Assessor's Office	Emily Murphy
Attorney's Office	Martin Polowy
Building Department.....	Mark Berke
Building Maintenance.....	Daniel Rizzo
Central Fire Alarm	James Koeppel
Comptroller's Office.....	Daryl Bramer
Councilmembers	Deputy Supervisor
Emergency Services & Safety	James Zymanek
Engineering Services	Brian Armstrong
Finance / Contract Compliance & Administration	Lynda Juul
Highway.....	Steven Floss
Human Resources	Robert McCarthy
Planning	Daniel Howard
Police.....	Scott Chamberlin
Senior Services.....	Melissa Abel
Supervisor's Office	Brian Kulpa
Town Clerk	Francina Spoth
Town Court	Kimberly Kern
Water Pollution Control Facility / Sewer Maintenance	Jeffrey Burroughs
Youth & Recreation	Mary-Diana Pouli

APPENDIX B

EMERGENCY PURCHASE DOCUMENTATION

(SEE FOLLOWING PAGE)

Town of Amherst Emergency Purchase Documentation Form

This form is to be completed for all emergency purchases made that contravene the Town's Purchasing Policy. You must contact the Supervisor (or Deputy Supervisor in the Supervisor's absence) to obtain his/her approval prior to making the purchase. This form must be completed and submitted to the Town Board at the first work session following the Emergency purchase. A copy should also be submitted to the Town Attorney and Contract Compliance & Administration Department.

An exception to the competitive bidding requirements exists for emergency situations (GML §103[4]). There are three basic statutory criteria to be met in order to fall within this exception. These are that (1) the situation arises out of an accident or other unforeseen occurrence or condition; (2) the circumstances affect public buildings, public property, or life, health, safety or property of the political subdivision's residents; and (3) the situation requires immediate action which cannot await competitive bidding.

Generally, there must be a present, immediate and existing condition which is creating an imminent threat or danger and which requires such immediate action that a further delay to comply with competitive bidding requirements is so detrimental to the public interest that it overcomes the strong public policy in favor of bidding. Further, because the emergency must arrive out of an accident or unforeseen occurrence, it is doubtful a local government may invoke the emergency exception in a situation which the result of inaction or dilatory behavior on the part of local officials and which, therefore, could have been foreseen in time to advertise for bids.

Even when a governing board passes a resolution that a public emergency exists, the public interest dictates that purchases are made at the lowest possible costs, seeking competition by informal solicitation of quotes or otherwise, to the extent practical under the circumstances.

1. Date of Emergency Purchase: _____
2. Date you received approval from the Supervisor: _____ Supervisor's Initials: _____
3. Date of Town Board meeting where Board is notified: _____
4. Amount of Emergency Purchase. Please provide a detailed listing of items purchased and the cost of each (attach additional detail if necessary): _____

5. Is there adequate funding in your current operating budget to cover this purchase? _____
Identify budget Org/Object: _____
6. Please describe the circumstances that resulted in the need to make an emergency purchase without following the Town's Purchasing Policy: _____

7. Please describe what steps were taken to ensure the lowest cost for the Emergency Purchase. If none, please explain why your department was prevented from doing so: _____

8. Department Head Signature: _____ Date: _____

CC: Town Board, Town Attorney, Contract Compliance & Administration

For Contract Compliance & Administration Use Only	
Date of Town Board Resolution:	Emergency Purchase Tracking/Res #:

APPENDIX C

VERBAL QUOTE SHEET

(SEE FOLLOWING PAGE)



Town of Amherst

5583 Main Street
Williamsville, NY 14221

Verbal Quote Sheet

Product Description: _____

Quote #1 Date: ___/___/___ Vendor Name: _____

Contact Name: _____ Phone _____

Email: _____ **COST: \$** _____

Notes: _____

Quote #2 Date: ___/___/___ Vendor Name: _____

Contact Name: _____ Phone _____

Email: _____ **COST: \$** _____

Notes: _____

Quote #3 Date: ___/___/___ Vendor Name: _____

Contact Name: _____ Phone _____

Email: _____ **COST: \$** _____

Notes: _____

Quotes obtained by: _____

Department: _____