



LOCAL GOVERNMENT MANAGEMENT GUIDE

# Seeking Competition in Procurement



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July 2014  
Reprinted January 2016

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Seeking competition in procurement is important in our business and often in our personal lives too. In our personal lives, we seek competition instinctively when we shop at the grocery store, or when we purchase a new or used vehicle. No one needs to tell us that it's a smart idea to make price and quality comparisons between different stores and different manufacturers in an effort to obtain the most favorable terms for our own money.

In our business lives we also know that we need to seek competition, but rather than just relying on common sense, seeking competition is often required by State law or by locally adopted policy. If managed effectively, State and local procurement requirements can increase competition and reduce the cost of goods and services of acceptable quality. A fair and open competitive process will also help discourage favoritism in public procurements, encouraging additional vendors to compete for your business. Increasing your organizational knowledge about State and local requirements will help you create a proactive, competitive environment in your procurement function.

This guide provides an overview of the following procurement topics:

- Who is Responsible ?
- Planning and Promotion
- Seeking Competition
- E-Procurement
- Cooperative Purchasing
- Piggybacking on Certain Government Contracts
- Procurement Policies and Procedures
- Professional Services
- Preferred Sources
- Environmentally Responsible Purchasing
- Ethics and Conflicts of Interest.

In addition to these topics, Appendix A is provided to help you understand the types and dollar thresholds of purchases and contracts for public work subject to competitive bidding or to local policies and procedures. Appendix B will assist you in updating or creating your own procurement policies and procedures.

Seeking competition in public procurements can be a complex topic and the information contained in this guide is not a substitute for the services of your locality's attorney. This guide is designed as a layperson's guide to topics relevant to seeking competition. We encourage you to seek the advice of your attorney on legal issues pertaining to bidding and other aspects of your contractual arrangements for the acquisition of goods and services.

**If managed effectively, State and local procurement requirements can increase competition and reduce the cost of goods and services of acceptable quality.**

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The governing board is responsible for adopting policies that describe its goals for procurements, including formal procurement policies and procedures that govern the acquisition of goods and services not required by law to be competitively bid.

## Who is Responsible?

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Whether your procurement process is centralized through a purchasing agent, or decentralized with many officials conducting their own procurements, it is the people making procurements who are the front line in seeking competition. It is vitally important that purchasing agents and other procurement officials have sufficient knowledge about the laws and local policies that guide competitive procurement. It's also important that these individuals possess a spirit of thriftiness and cost consciousness.

While the primary responsibility rests with officials who actually make the procurements, management plays an important role in maintaining effective communication. Management's communication of the organizational requirements and expectations for seeking competition will have a pervasive effect on how diligently competition is sought throughout the entity. The best policies ever written are just paper unless they are clearly conveyed to staff, and then enforced.

Responsibility for procurement generally starts with the governing board. The governing board is responsible for adopting policies that describe its goals for procurements, including formal procurement policies and procedures that govern the acquisition of goods and services not required by law to be competitively bid. In some cases, the initial policies and updates will be drafted by procurement officials for the board's review and eventual approval. The governing board is also responsible for adopting a code of ethics that supplements State law relating to conflicts of interest on the part of officers and employees. A code of ethics is required to set forth standards of conduct relating to several specific areas and may also contain provisions addressing ethical behavior in the procurement process.<sup>1</sup>

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<sup>1</sup> General Municipal Law, section 806 requires that municipal codes of ethics, at a minimum, provide standards for officers and employees with respect to disclosure of interest in legislation before the local governing board, holding of investments in conflict with official duties, private employment in conflict with official duties and future employment.

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## Planning and Promotion

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One of the best methods for ensuring that goods and services are acquired in a cost effective manner is to create as much competition as possible. In our personal lives, vendors compete for our business every day in the form of advertisements, holiday sales, and coupons. Competition for local government and school district dollars is not always as dynamic as what we experience in our own personal lives. To create as much market awareness as possible, local governments and school districts should carefully plan their solicitations for future procurements. Whether using formal competitive bids, competitive offerings, requests for proposals (RFPs), or written and verbal quotes, a well-planned solicitation effort is needed to reach as many qualified vendors as possible. If conducted properly, the competition generated from advance planning may save your locality money.

Advertising is the heart of seeking competition, and localities may benefit from publicizing their procurement needs (beyond required legal notices) to attract prospective vendors. Although not commonly used in government, some economical forms of disseminating information that treat all prospective vendors in a fair and equitable manner are certainly worth considering. For example, preparation of a pamphlet, such as a *“Guide to Doing Business with [Name of Unit]”* may help attract new vendors and encourage current vendors to keep their prices competitive. The pamphlet could include descriptions of the types of commodities commonly purchased, general instructions as to when certain types of bids or offers are usually solicited, the name of the official newspaper and any other places where advertisements for bids or offers will be published. Other helpful information would include: the location and business hours of the purchasing department or contact person, key telephone and fax numbers, and driving directions for the opening of bids or offers. Once developed, this type of pamphlet can be posted on your website and mailed upon request to prospective vendors.<sup>2</sup>

One of the best methods for ensuring that goods and services are acquired in a cost effective manner is to create as much competition as possible.

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<sup>2</sup> Any such method of dissemination of information should be undertaken in a way that treats all prospective vendors in a fair and equitable manner.

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Planning and gathering pertinent information is vital in any decision-making process, and this golden rule also applies to seeking competition in procurements.

Keep in mind that when soliciting competitive bids or offers, you can utilize more than one form of media to attract qualified bidders or offerors. In addition to using your official newspaper, you may advertise in other newspapers and trade journals, and notices can be posted on your website. You may also maintain a comprehensive list of prospective bidders or offerors, and provide notices directly to those on the list.<sup>3</sup> A comprehensive solicitation effort helps to ensure that the largest possible pool of potential vendors is made aware of your needs. You should weigh the cost of using additional forms of media against the potential savings from increased competition.

Another good business practice is to prepare a purchasing calendar to facilitate and coordinate the purchasing function. A purchasing calendar identifies dates on which certain classes of items will be bid or otherwise purchased. This type of planning helps coordinate the purchasing process on a weekly, monthly and yearly basis. If possible, you should also plan to acquire particular types of items when the best prices are available and prompt deliveries can be made. Annual purchases (for example, volume purchasing and bidding) can be scheduled during periods when suppliers can be the most competitive. However, this option only works if ample storage space is available for bulk purchases. The use of an orderly purchasing calendar will also help ensure that established procurement policies and procedures are followed, and goods and services are received in a timely manner.

Depending on the type and dollar value of the procurement, planning and disseminating information about future purchases can be relatively simple and require minimal effort, or it can be a complex and time-consuming process. Be sure to allow sufficient lead time to permit adequate planning, advertising, review of vendor qualifications, and possible readvertising, especially in the case of large dollar acquisitions. Planning and gathering pertinent information is vital in any decision-making process, and this golden rule also applies to seeking competition in procurements.

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<sup>3</sup> Care should be taken to ensure that all known prospective bidders or offerors, with reasonable limitations, are included on the list and that no bidders or offerors are arbitrarily excluded or removed from the list.



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## Seeking Competition

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One of the goals of seeking competition is to foster honest competition to enable your government to obtain quality commodities and services at the lowest possible cost. Seeking competition also guards against favoritism, extravagance and fraud, while allowing interested vendors a fair and equal opportunity to compete. Organizations that embrace the goals of seeking competition can realize both monetary benefits and product satisfaction from the time, effort and resources required to conduct statutorily required competition. To realize these benefits fully, procurement officials need to be knowledgeable about the requirements of competitive bidding and competitive offerings (i.e., “best value” awards).

**Monetary Thresholds** – Generally, local governments and school districts are required to advertise for competitive bids when procurements exceed certain dollar thresholds. Purchase contracts involving expenditures in excess of \$20,000 and contracts for public work involving expenditures in excess of \$35,000 are generally subject to competitive bidding under the law.<sup>4</sup> When using competitive bidding, contracts are awarded to the “lowest responsible bidder” after public advertisement for sealed bids. As further discussed below, local governments and school districts may elect to award “purchase contracts,” which exceed the monetary threshold, on the basis of “best value,” as an alternative to awarding contracts to the “lowest responsible bidder.”

There are several exceptions to the competitive bidding and competitive offering (“best value”) requirements, such as purchases made through the New York State Office of General Services, purchases made through certain county and federal contracts, purchases made through the use of certain contracts let by other states or political subdivisions, emergency purchases, professional services and purchases from a legitimate sole source. In addition, procurements of commodities and services may be required to be made from preferred sources. We discuss some of these exceptions and purchases from preferred sources later in this guide.

Seeking competition also guards against favoritism, extravagance and fraud, while allowing interested vendors a fair and equal opportunity to compete.

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<sup>4</sup> General Municipal Law, section 103(1). Although not within the scope of this guide, General Municipal Law section 101 (the “Wicks Law”) provides additional monetary thresholds and requirements for contracts for the erection, construction, reconstruction or alternation of buildings.

In many instances, the first step in the competitive process is to analyze proposed procurements and determine whether the monetary threshold will be exceeded. In determining whether the threshold will be exceeded, the local government or school district must consider the aggregate amount reasonably expected to be expended for “all purchases of the same commodities, services or technology<sup>5</sup> to be made within the twelve-month period commencing on the date of purchase,”<sup>6</sup> whether from a single vendor or multiple vendors. Commodities, services or technology that are similar or essentially interchangeable should be considered as the “same” for this purpose. Monetary thresholds may not be avoided by artificially splitting or breaking up contracts into lesser agreements, or entering into a series of agreements, for sums below the dollar thresholds.<sup>7</sup> The same principles against artificially splitting to avoid the monetary threshold should be applied to contracts for public work. If relevant, planning documents should state how the amount was determined and whether the procurement will be a purchase contract or a contract for public work.<sup>8</sup>

### Example - Aggregate Purchases

Copy paper is purchased throughout the year and purchased from more than one vendor. Vendor A is projected to supply \$14,500 in copy paper and Vendor B \$10,000 in copy paper. Both vendors have very similar pricing structures. The total amount expected to be expended for the twelve-month period commencing on the date of first purchase of copy paper throughout the local government or school district determines whether the threshold is exceeded. Because the aggregate purchase of the copy paper for the twelve-month period is estimated to be in excess of \$20,000, competitive bidding or a competitive offering is required for these purchases, unless an exception applies. It is easy to see from this example how planning plays an important role in determining the need to comply with statutory bidding or offering requirements, and in fostering competition and achieving potential cost savings.

<sup>5</sup> Although there is no definition of “technology” in the General Municipal Law, State Finance Law section 160(10) defines the term to mean “either a good or a service or a combination thereof, that results in a technical method of achieving a practical purpose or in improvements in productivity.”

<sup>6</sup> General Municipal Law, section 103(1). The statute also prohibits any change to or a renewal of a purchase contract if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period to an amount greater than the dollar threshold amount.

<sup>7</sup> General Municipal Law, section 103(1).

<sup>8</sup> In light of a series of statutory amendments (see amendments to General Municipal Law, section 103, by Laws of 2011, chapter 608 amended by Laws of 2012, chapter 2; Laws of 2010, chapter 56, Part FF), it appears that services, other than those necessary for the completion of a public works contract governed by the prevailing wage requirements of article 8 of the Labor Law (e.g., building construction), are now generally categorized under the statute as “purchase contracts” and not “contracts for public work.” Therefore, absent any statutory or judicial clarification, the safest approach is to apply the \$20,000 threshold to such services.

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**Specifications** – The specification document sets forth the standards and requirements that competitors must observe, and provides them with information necessary to prepare their bids or offers. Specifications should be clearly written. They should provide prospective vendors a common standard by which to be measured, and provide assurance that vendors will be competing on a fair and equal basis, which should encourage vendors to be responsive and competitive. The specification should indicate the basis on which the bids and offers will be evaluated and the award made. Preparing responses can be costly to vendors, so qualified firms may be unwilling to go through the work and expense of preparing a bid or offer if critical details of the engagement or the criteria used to select the vendor are not clearly communicated during the solicitation process. Specifications should not be too vague or indefinite, so that competing bidders have enough information to formulate intelligent bids or offers. Specifications also should avoid being unduly restrictive, thereby shutting out or stifling open and fair competition among vendors. Through the use of fair specifications, participation in the competitive process may increase, resulting in potential cost savings.

When competitive bidding is required, the award of the contract is made to the lowest priced responsible bidder which has complied with the specifications.

**Awarding Contracts** – When competitive bidding is required, the award of the contract is made to the lowest priced responsible bidder which has complied with the specifications. In assessing whether a bidder is responsible, a local government or school district should consider factors such as a bidder’s capacity and financial ability to complete the contract, accountability, past performance, reliability and integrity. Also, a bidder is entitled to reasonable notice and opportunity to be heard before a determination of non-responsibility is made.<sup>9</sup>

Local governments and school districts may elect to award purchase contracts which exceed the statutory threshold (i.e., \$20,000) to a responsive and responsible offeror on the basis of “best value” (“competitive offering”), instead of to the lowest responsible bidder.<sup>10</sup> For this purpose, the term “purchase contract” includes contracts for service work, but excludes contracts necessary for the completion of a public works contract covered by the prevailing wage provisions of article 8 of the Labor Law, such as for building construction.<sup>11</sup> Towns, villages, cities (except New York City) and counties must first authorize the use of best value for awarding purchase

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<sup>9</sup> The “Iran Disinvestment Act of 2012” provides, among other things, that a “person” identified as engaging in “investment activities in Iran” on a list that has been created by the State Office of General Services may not be deemed a responsible bidder or offerer (General Municipal Law, section 103-g; see, <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>).

<sup>10</sup> General Municipal Law, section 103(1).

<sup>11</sup> Specifically, it excludes public works contracts covered by the prevailing wage provisions of article 8 of the Labor Law.

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**“Best value” is defined for this purpose as a basis for awarding contracts “to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers.”**

contracts by the adoption of a local law. District corporations (e.g., fire districts), school districts, or boards of cooperative educational services (BOCES) must first authorize the use of best value by rule, regulation or resolution adopted at a public meeting.

“Best value” is defined for this purpose as a basis for awarding contracts “to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers.”<sup>12</sup> Therefore, in assessing best value, non-price factors can be considered when awarding the purchase contract. Non-price factors can include, but are not limited to, reliability of a product, efficiency of operation, difficulty/ease of maintenance, useful lifespan, ability to meet needs regarding timeliness of performance, and experience of a service provider with similar contracts. The basis for a best value award, however, must reflect, whenever possible, objective and quantifiable analysis.<sup>13</sup>

For purposes of best value, a responsive offeror is an offeror meeting the minimum specifications.<sup>14</sup> As discussed above, in assessing whether an offeror is responsible, a local government or school district should consider an offeror’s capacity and financial ability to complete the contract, accountability, past performance, reliability and integrity.<sup>15</sup>

Accordingly, should the local government or school district elect to award a purchase contract on the basis of best value, the local government or school district must be prepared to show that: (1) the offeror is responsive and responsible; and (2) local officials applied objective and quantifiable standards, whenever possible, to determine that the offer optimizes quality, cost and efficiency. The local government or school district should have a written justification if it bases a best value award on criteria that are not objective and quantifiable.

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<sup>12</sup> See State Finance Law, section 163(1)(j). General Municipal Law, section 103(1) cross-references the definition of “best value” in State Finance Law, section 163.

<sup>13</sup> Ibid. State Finance Law, section 163(1)(j) also provides that “[s]uch basis may also identify a quantitative factor for offerors that are small businesses or certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law to be used in evaluation of offers for awarding of contracts for services.”

<sup>14</sup> State Finance Law, section 163(1)(d).

<sup>15</sup> See State Finance Law, section 163(1)(c).

The best value specification should describe the general manner in which the evaluation and award of offers will be conducted and, as appropriate, identify the relative importance or weighting of price and non-price factors.<sup>16</sup> As noted, the decision to award a contract on the basis of best value must be based on objective and quantifiable analysis, such as a cost-benefit analysis, whenever possible. In evaluating and determining to accept a higher priced offer, the local government or school district generally should use a cost-benefit analysis to show quantifiable value or savings from non-price factors that offset the price differential of the lower price offers. The local government or school district’s procurement policies and procedures should require documentation of this analysis.<sup>17</sup>

### Example - Cost-Benefit Analysis

A local government solicits competitive offers to purchase a new pickup truck. Vendor A offers the lowest priced truck at \$40,000. Vendor B offers a more fuel-efficient truck at a price of \$45,000. Both vendors are responsive and responsible offerors. The local government reasonably estimates its average annual fuel costs to be \$4,000 for Vendor A’s truck and \$3,000 for Vendor B’s truck. The local government also concludes, based on reliable independent studies and assuming current usage of the vehicle, the more fuel efficient truck (Vendor B) will likely have \$250 less in maintenance costs annually than Vendor A (assuming maintenance costs of \$1,000 annually for Vendor A’s truck). The local government determines the expected useful life of a new truck to be 10 years and intends to retain the truck for the full useful life. In order to quantify these other critical aspects relating to the new pickup truck purchase, the local government prepares the following cost-benefit analysis:

|  | <b>Vendor A</b> | <b>Vendor B</b> |
|--|-----------------|-----------------|
| <b>Price (Truck)</b>                                 | \$40,000        | \$45,000        |
| <b>Fuel Costs over Useful Life (10 Years)</b>        | \$40,000        | \$30,000        |
| <b>Maintenance Costs over Useful Life (10 Years)</b> | \$10,000        | \$7,500         |
| <b>Total Cost</b>                                    | <b>\$90,000</b> | <b>\$82,500</b> |

Based on this analysis, it may be possible for the local government to support a determination that the truck from Vendor B provides the “best value” to the local government.

Whether a local government or school district elects to award a purchase contract based on lowest responsible bidder or best value, they are required to comply with public advertising and bid/offer opening requirements that apply to purchase contracts above existing statutory thresholds.<sup>18</sup>

<sup>16</sup> See State Finance Law, section 163(9)(b).

<sup>17</sup> See State Finance Law, section 163(9)(a); General Municipal Law, section 104-b(2)(d), (e).

<sup>18</sup> General Municipal Law, section 103(2).

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The advertisement for bids or offers must designate how the electronic bid or offer will be received, such as designating the website or email address where the bid or offer should be sent.

## E-Procurement

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Another possibility for increasing competition as well as convenience is to accept bids or offers electronically. The law authorizes local governments and school districts to receive electronic bids or offers in connection with purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the Labor Law).<sup>19</sup> The governing board may by resolution authorize the receipt of bids or offers in an electronic format. The advertisement for bids or offers must designate how the electronic bid or offer will be received, such as designating the website or email address where the bid or offer should be sent.<sup>20</sup>

With the exception of “technology contracts,” the submission of bids or offers in electronic format may not be required as the sole method, and paper bids or offers must still be accepted. All other minimum requirements of the competitive bidding or competitive offering process remain the same (e.g., advertising in the official newspaper, public opening of bids or offers, etc.).

Any method used to receive electronic bids or offers must also comply with article three of the State Technology Law (the “Electronic Signatures and Records Act”) and related regulations. Also, the method used must, at a minimum:

- Document the time and date of receipt of the bids or offers received electronically,
- Authenticate the identity of the sender,
- Ensure the security of the information transmitted and
- Ensure the confidentiality of the bid or offer until the time and date established for the opening of bids or offers.

The authorization for electronic bids or offers is scheduled to sunset and expires on June 1, 2018.

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<sup>19</sup> General Municipal Law, section 103(1).

<sup>20</sup> 9 NYCRR section 540.2.

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## Cooperative Purchasing

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In a cooperative purchasing arrangement, two or more localities work together to procure commodities or services jointly rather than separately. The benefits of cooperative purchasing are potential cost savings attained by lower commodity prices (achieved through economies of scale) and lower joint administrative costs. The basic principle behind cooperative purchasing is that supplies, materials and equipment can often be purchased for substantially less if bought in quantity.

Cities, towns, counties, villages, fire districts, school districts, BOCES and town or county improvement districts in New York State are authorized to enter into cooperative purchasing arrangements among themselves through intergovernmental cooperation agreements.<sup>21</sup> Intergovernmental cooperation may be defined as an arrangement between or among two or more governments for accomplishing common goals, providing a service, or solving a mutual problem. Basically stated, local governments and school districts may generally perform any function or service on a cooperative basis that they may perform individually. Purchasing is an example of where intergovernmental cooperation can be employed.

In a cooperative purchasing arrangement, all laws relating to competitive bidding or competitive offering must be complied with and the cooperative agreement, which must be approved by each board, must be in place prior to the solicitation of bids or offers. Local policies, such as the locality's procurement policy, may also need to be amended to ensure that they are consistent with the cooperative purchasing agreement. Many local governments and school districts purchase similar items, such as electricity, office supplies, vehicle maintenance parts, cafeteria food and beverages, sports equipment, and cleaning supplies, which could be purchased through a cooperative arrangement. Typical cooperative purchasing activities include development of a single set of specifications for common items, preparation of advertisements of bids or offers, administration of the competitive bidding or offering process, and arrangement for purchase deliveries. Cooperative purchasing can provide all participants with the economies of large scale purchasing.

The basic principle behind cooperative purchasing is that supplies, materials and equipment can often be purchased for substantially less if bought in quantity.

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<sup>21</sup> General Municipal Law, sections 119-n, 119-o.

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## **Piggybacking on Certain Government Contracts**

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As an alternative to soliciting competition on your own or through cooperative purchasing arrangements, local governments and school districts may “piggyback” on contracts that have been extended to local governments and school districts by certain other governments.

As an alternative to soliciting competition on your own or through cooperative purchasing arrangements, local governments and school districts 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.

**County Contracts** – County governing boards in New York State may authorize the inclusion of a provision in their purchase contracts and contracts for services<sup>22</sup> which are awarded to the lowest responsible bidder after public advertisement for any political subdivision to obtain commodities or services under such contracts.<sup>23</sup> Procurements made under these contracts by other localities must be made in accordance with the rules adopted by the county board. These rules prescribe the conditions under which, and the manner in which, the procurements may be made. Information relative to county contracts that have been extended to other localities can be obtained from county purchasing agents or other appropriate county officials. Certain counties list available contracts on their websites, or mail listings of contracts upon request.

**State Contracts** – Certain State contracts for the procurement of commodities, equipment, materials, supplies, services, technology, and food products are made available to local governments and school districts through the New York State Office of General Services (OGS).<sup>24</sup> Local governments and school districts may make purchases at the same prices and under the same terms as the State. For example, these contracts include awards for road salt and fuel, vehicles and heavy equipment, school buses, computer hardware and software, and much more.

OGS contracts are readily accessible on the OGS website at [www.ogs.ny.gov](http://www.ogs.ny.gov). You may also register online at [www.ogs.ny.gov/pns](http://www.ogs.ny.gov/pns) to receive contract email notices and other related information. You can sign up to receive information for as few or as many of the contract areas that interest you. The majority of State contracts can be used as soon as they are awarded. Orders are placed directly with the contractors listed, using your own locality’s or school’s purchase order. The State contract number should be included on both your purchase order and the original invoice presented for payment.

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<sup>22</sup> Other than those that are subject to prevailing wage provisions of article 9 of the Labor Law (e.g., building services).

<sup>23</sup> See County Law, section 408-a(2); see also General Municipal Law, section 103(3).

<sup>24</sup> See General Municipal Law, section 104.



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The price of certain OGS commodities is directly impacted by volatile market conditions. These commodities include road salt, fuel oil, gasoline, diesel fuel and propane. OGS has created an on-line “filed requirements” database in order to assist users in participating in the next contract cycle for some of these price-sensitive commodities. You must file your information on-line before the required due date. OGS uses the “filed requirements” data to prepare bid documents and solicit competitive bids. The filing of requirements in this database will bind you to the OGS contract as if you had contracted directly with the vendor. Since notices about “filed requirements” are sent to the email addresses your office has previously provided OGS, you are encouraged to keep your Purchaser Notification System information up to date.

In addition to purchases through OGS, local governments and school districts may also make purchases through other departments or agencies of the State, subject to rules promulgated by OGS after consultation with the State Procurement Council.<sup>25</sup>

**Federal Contracts** – Local governments and school districts may purchase from certain federal General Service Administration (GSA) contracts. Under these provisions, local governments and school districts have the option to purchase:

- Information technology and telecommunications hardware, software and professional services through cooperative purchasing;<sup>26</sup>
- Certain equipment suitable for counter-drug, homeland security and emergency response activities through the United States Department of Defense;<sup>27</sup>
- Alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purposes clothing, and related services;<sup>28</sup>
- Certain products and services to be used to facilitate recovery from major disasters declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or to facilitate recovery from terrorism or nuclear, biological, chemical or radiological attack;<sup>29</sup> and

The price of certain OGS commodities is directly impacted by volatile market conditions. These commodities include road salt, fuel oil, gasoline, diesel fuel and propane.

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<sup>25</sup> See Laws of 2012, chapter 55, amending General Municipal Law, section 104. As of January 31, 2013, the regulations had not yet been finalized.

<sup>26</sup> Permissible pursuant to federal GSA supply “Schedule 70”. Should the local government or school district choose to use the contract, they are required to comply with the federal schedule ordering procedures set forth in the federal regulations. General Municipal Law, section 104(2). See also, General Municipal Law, section 103(1-b).

<sup>27</sup> General Municipal Law, section 104(2) authorizing the use by local governments to make purchases pursuant to Section 1122 of the National Defense Authorization Act for Fiscal year 1994.

<sup>28</sup> General Municipal Law, section 104(2) authorizing the use by local governments to make purchases pursuant to the Federal Local Preparedness Acquisition Act (“Schedule 84”).

<sup>29</sup> General Municipal Law, section 104(2) authorizing the use by local governments to make purchases pursuant to Section 833 of the John Warner national defense authorization act for fiscal year 2007.

While purchasing through extended State, county and other government contracts may be advantageous, it is not required, and does not guarantee a lower price and/or suitable quality item.

- Certain goods and services used “to facilitate disaster preparedness or response”.<sup>30</sup>

Each of the provisions above is scheduled to sunset on July 31, 2019.

**Certain Other Government Contracts** – Local governments and school districts may contract to purchase apparatus, materials, equipment or supplies or contract for services related to the installation, maintenance or repair of apparatus, materials, equipment, and supplies through the use of a contract let by the United States or any agency thereof, any state or any other county, political subdivision or district therein.<sup>31</sup> In order for this exception to apply, the contract must also be let either to the lowest responsible bidder or on the basis of best value<sup>32</sup> in a manner consistent with GML section 103 and made available for use by other governmental entities. For additional details on this exception, see the Piggybacking Law bulletin on our website at [www.osc.state.ny.us/localgov/pubs/piggybackinglaw.pdf](http://www.osc.state.ny.us/localgov/pubs/piggybackinglaw.pdf).

While purchasing through extended State, county and other government contracts may be advantageous, it is not required, and does not guarantee a lower price and/or suitable quality item. On the plus side, State, county and other government contracts may provide officials with the following additional benefits:

- Reduction or elimination of the time required to prepare specifications;
- Enhancement and simplification of the procurement process, and
- Minimization of the time required to determine “responsibility” of bidder(s).

When using a State, county or other government contract, you should also consider other cost factors including delivery charges. Most OGS contracts are FOB (free on board) and delivery to the purchaser’s location is generally free, another potential advantage of using State OGS contracts. All other miscellaneous costs should be investigated before you commit to purchasing through a State, county or other government contract.<sup>33</sup> Once again, allowing sufficient time to plan for major purchases is essential.

<sup>30</sup> General Municipal Law, section 104(2) authorizing the use by local governments to make purchases pursuant to the Federal Supply Schedule Usage Act of 2010.

<sup>31</sup> General Municipal Law, section 103(16)

<sup>32</sup> Political subdivisions (other than New York City) that wish to make procurements under GML section 103 (16) through the use of a contract let on the basis of best value must have first authorized the use of best value for awarding their own purchase contracts by local law, or in the case of district corporations (e.g. fire districts), school districts and BOCES, rule, regulation, or resolution. This authorization may be accomplished by the adoption of a single local law or single rule, regulation or resolution.

<sup>33</sup> In fact, General Municipal Law section 103(3) and 104(2) expressly provide that, prior to making a procurement through a county or certain federal contracts, the appropriate officer, board or agency of the local government or school district must consider whether the procurement will result in cost savings after all factors, including charges for service, material and delivery, have been considered.

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## Procurement Policies and Procedures

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Every local government and school district must adopt its own policies and procedures for procurements of goods and services not required by law to be competitively bid. Procurement policies and procedures generally ensure that competition is sought in a reasonable and cost effective manner for procurements below the bidding thresholds and for other contracts exempt from bidding. A procurement policy and procedures applies to:

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

The law provides that goods and services not required to be competitively bid must be procured in a manner to assure the prudent and economical use of public moneys in the best interest of the taxpayers; to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost; and, to guard against favoritism, improvidence, extravagance, fraud and corruption.<sup>34</sup>

As there are vast differences in the size and nature of local government and school district operations, and in the dollar value of their procurements, management should carefully consider what procedures are appropriate for their operations, within the requirements of the law.<sup>35</sup> The policy and its procedures should be well thought out and designed specifically to benefit the locality and its taxpayers, and not simply a copy of a sample policy. Procedures should be created after input is solicited and considered from all staff involved in the procurement process.<sup>36</sup>

When a procurement is not subject to bidding requirements, the law generally requires that the procurement policy provide that alternative proposals or quotations be obtained by use of written requests for proposals (RFPs), written quotations, verbal quotations or any other method that furthers the purposes of the law. The procurement policy may set forth circumstances when, or types of procurements 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 local government or school district.

**Every local government and school district must adopt its own policies and procedures for procurements of goods and services not required by law to be competitively bid.**

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<sup>34</sup> General Municipal Law, section 104-b(1).

<sup>35</sup> General Municipal Law, section 104-b.

<sup>36</sup> General Municipal Law, section 104-b(3) requires that comments concerning the policies and procedures must be solicited from officers of the political subdivision who are involved in the procurement process prior to the enactment of the policies and procedures, and from time to time thereafter.

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**Each locality should develop detailed procedures that are appropriate for the size and complexity of its operations.**

These exceptions should be limited and be set forth only when properly justified in the public interest.<sup>37</sup> Otherwise, the effectiveness of the procurement policy and its procedures will be diminished.

Each locality should develop detailed procedures that are appropriate for the size and complexity of its operations. As most requirements involve benefits and costs, any new policy should consider the cost-benefit relationship between procedures and the expected outcomes. In adopting and carrying out a procurement policy and procedures, the benefits of required actions should not outweigh the costs, nor overburden the process.<sup>38</sup> Additionally, the policy and procedures must require adequate documentation of actions taken. Documentation may include memoranda, written quotation forms, telephone logs (for verbal quotes), RFPs, and copies of Federal, State, county contracts or other government contracts for which “piggybacking” is permitted. If a contract is awarded to an offer other than the lowest dollar offer, the policy must require that there be justification and documentation, setting forth the reasons the award furthers the purposes of the statute.

Your policies and procedures should be reviewed annually, as required by law.<sup>39</sup> This annual review can help ensure that procedures are current and appropriate to meet the changing needs of your local government or school district. Comments from purchasing officials should be requested at review time, as they may identify the need to amend the policy or procedures.

Appendix A contains a chart designed to assist you in determining whether a contract is subject to competitive bidding. Appendix B contains a sample procurement policy that will assist you in developing or modifying your procurement policies and procedures.

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<sup>37</sup> Examples may include emergencies when time is a crucial factor, procurements for which there is no possibility of competition and very small procurements for which solicitations of competition would not be cost effective.

<sup>38</sup> General Municipal Law, section 104-b(2)(c) requires that the procurement policies and procedures set forth when each method of procurement will be utilized, taking into account which method will best further the purposes of section 104-b and “the cost-effectiveness of the method.”

<sup>39</sup> General Municipal Law, section 104-b(2)(f) also provides that the procurement policy identify the individuals and their titles who are responsible for purchasing. This information is to be updated biennially.

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## Professional Services

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One of the most prominent exceptions to competitive bidding is professional services. Professional services generally include services rendered by attorneys, engineers, and certain other services requiring specialized or technical skills, expertise or knowledge, the exercise of professional judgment or a high degree of creativity. In addition, insurance coverage (e.g., health, fire, liability, and workers' compensation) is also not subject to competitive bidding requirements.

Professional services can involve significant dollar expenditures, and localities generally must include in their procurement policies and procedures a proposal or quotation process to ensure that these procurements are made on the most favorable terms and conditions. Seeking competition for professional services and insurance coverage may be an opportunity to generate cost savings for your locality. Your policy should describe the methods and procedures for promoting competition in the procurement of professional services.

One way to promote competition in professional services is to issue requests for proposals (RFPs). Using an RFP is a common method of seeking competition for professional services, where price should not necessarily be the sole criterion for award of the contract. An RFP generally is a document that provides detailed information concerning the type of service to be provided including minimum requirements and, where applicable, the evaluation criteria that will govern the contract award. Potential service providers typically are supplied with copies of the RFP and are requested to submit proposals by a specified date. Proposals can be solicited via public advertisement, or a comprehensive list of potential vendors can be compiled with vendors contacted directly and provided with the RFP. An RFP can provide a mechanism for fostering increased competition for professional services and can ensure that these contracts are awarded in the best interests of the taxpayers.

Professional services can involve significant dollar expenditures, and localities generally must include in their procurement policies and procedures a proposal or quotation process to ensure that these procurements are made on the most favorable terms and conditions.

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The law requires school districts to utilize a competitive RFP process when contracting for annual audit services and limit the audit engagement to no longer than five consecutive years.

RFP procedures should include a comprehensive, fair solicitation process. Prospective contractors should be made aware of your locality's needs, the procedures involved in responding to the RFP and the process for evaluating proposals. Evaluation criteria and any weighting or ranking of the importance of those criteria should be set forth in the RFP. The evaluation criteria can include factors in addition to price (e.g., experience, staff availability, work plan and methodology to achieve desired result and estimated completion times). The process should be based on a fair and equitable review and evaluation or ranking of the proposals. A well-planned effort can help encourage qualified providers to respond to the RFP and ultimately result in increased competition and potential cost savings.

Your procurement policy should designate whether RFPs or other similar procedures should be used to solicit professional services and insurance coverage. The solicitation of these services via RFP can help provide assurance that quality services are obtained under the most favorable terms and conditions possible.

Generally, there are no set rules regarding the frequency of RFPs. However, provision should be made for periodic solicitations at reasonable intervals. Specific requirements do apply, however, to school and fire district audit services. The law requires school districts to utilize a competitive RFP process when contracting for annual audit services and limit the audit engagement to no longer than five consecutive years.<sup>40</sup> In addition, those fire districts that are required to obtain an annual audit must procure those services through a competitive RFP process and also must limit the audit engagement to a term no longer than five consecutive years.<sup>41</sup>

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<sup>40</sup> Education Law, section 2116-a(3)(b).

<sup>41</sup> Town Law, section 181-b(3).

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## Preferred Sources

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New York State has enacted legislation to advance “special social and economic goals,” which accords certain providers with “preferred source” status.<sup>42</sup> Procurements of commodities and/or services, when available in the “form, function and utility” required by the political subdivision, are required to be made from preferred sources and are not subject to competitive procurement requirements. Preferred sources include: Correctional Industries Program of the Department 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 veterans’ workshops. The law establishes the priority to be accorded to the various preferred sources.<sup>43</sup>

Those who are not familiar with the commodities and services of preferred sources are often surprised to learn of the broad range of offerings and their quality and competitive pricing. Commodity offerings include office and classroom furniture such as desks, chairs, tables, and lockers; flags, cleaning products, and janitorial supplies; packaged foods and beverages; office and school supplies; and safety supplies and equipment such as fire extinguishers and signage. Services include document processing, mail services, messenger and phone answering services; food services; maintenance and janitorial services; garbage pickup and recycling, and electronics recycling. Preferred sources provide direct sales to local governments and school districts.

An assessment of preferred vendor availability should be made before a commodity or service is considered for competitive bidding or alternative procurement procedures. The Office of General Services (OGS) regularly updates comprehensive information about preferred sources, and it also provides an official “List of Preferred Source Offerings.” This information can be obtained from the OGS website ([www.ogs.ny.gov](http://www.ogs.ny.gov)) or by inquiry. Some preferred sources also have websites and can be contacted directly for information about their commodities and services.

**An assessment of preferred vendor availability should be made before a commodity or service is considered for competitive bidding or alternative procurement procedures.**

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<sup>42</sup> State Finance Law section 162(1), (2); Correction Law section 184.

<sup>43</sup> State Finance Law section 162(4).

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## Environmentally Responsible Purchasing

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In an effort to preserve our natural resources, many organizations, businesses and governments have embarked upon programs that encourage environmentally responsible purchasing.

Purchasing “green” is a socially responsible initiative that has gained momentum throughout our State and our country. In an effort to preserve our natural resources, many organizations, businesses and governments have embarked upon programs that encourage environmentally responsible purchasing. When seeking competition, local governments and school districts generally can consider whether energy-efficient equipment will produce savings in energy costs and, if properly justified, may include an energy efficiency threshold in their specifications or consider energy efficiency as part of a “best value” analysis. In addition, local governments and school districts can provide for a preference for “recycled products.”<sup>44</sup> It’s important to realize that a decision to purchase energy-efficient or recycled products may not save your locality money initially. However, long-term benefits may be realized through a reduction in energy costs or a positive impact on the environment.

In at least one instance, purchasing green is mandatory. The law<sup>45</sup> requires all “elementary or secondary schools”<sup>46</sup> to follow guidelines established by the OGS for “environmentally-sensitive cleaning and maintenance products” that are available in the form, function and utility generally used by schools in their facilities. The term “environmentally-sensitive cleaning and maintenance products” is defined as those products that minimize adverse impacts on children’s health and the environment.<sup>47</sup> OGS has developed lists of green cleaning products for this purpose. The OGS website also includes information on purchasing recycled or remanufactured products, and energy-efficient products.

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<sup>44</sup> General Municipal Law, section 104-a sets forth an exception to the requirements of General Municipal Law, section 103 for the purchase of “recycled products.” “Recycled product” is defined to mean any product manufactured from secondary materials (as defined in Economic Development Law, section 261), and meeting the requirements of Environmental Conservation Law, section 27-0717 (the State recycling emblem program) and any regulations of the Department of Environmental Conservation. If a “recycled product” meets specifications and the price is “reasonably competitive,” the political subdivision may award the contract to the vendor of the recycled product, notwithstanding the provisions of General Municipal Law, section 103. “Reasonably competitive” is defined to mean a cost premium not to exceed 10 percent of the comparable non-recycled product or 15 percent if at least 50 percent of the secondary material utilized in making the recycled product is generated from the waste stream in New York State.

<sup>45</sup> Education Law, section 409-i; see also State Finance Law, section 163-b.

<sup>46</sup> This is defined to cover school districts, BOCES, charter schools, approved private schools for the education of students with disabilities, state-supported schools for the deaf or blind operated pursuant to article eighty-five of the Education Law, and any other private or parochial elementary or secondary school (Education Law, section 409-I [1] [a]).

<sup>47</sup> Education Law section 409-i[1][b)].



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Besides opportunities for purchasing green, local governments and school districts are also exploring other options that help protect our environment. The Office of the State Comptroller released an audit report<sup>48</sup> in 2011 that discusses the cost effectiveness of purchasing liquid propane (LP), which the Environmental Protection Agency approved as an alternative clean fuel, for use in school buses rather than diesel fuel. The audit found that LP-powered buses cost more than the diesel alternative. However, New York State currently provides NYSERDA grant funds to bridge the difference in cost. The audit also found that LP fuel costs – with help from a federal tax credit – are lower, and that maintenance of LP buses is less expensive. However, paying for LP infrastructure (fueling stations) could add to a district’s start-up costs for using LP buses. If government tax credits for LP-powered buses continue to be available, and if surcharges on diesel-powered buses continue to increase, LP-powered buses can be a lower-cost alternative to diesel-powered buses. LP fuel is also safer to use and store than diesel fuel.

Each local government and school district needs to assess its own purchasing needs and objectives in relationship to green purchases. In some instances, environmentally responsible purchasing may be prohibitively costly or only produce limited benefits or efficiencies. Providing options for recycled and energy-efficient green products can often, and in some cases must, be part of seeking competition and the procurement process.

**Besides opportunities for purchasing green, local governments and school districts are also exploring other options that help protect our environment.**

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<sup>48</sup> [www.osc.state.ny.us/localgov/audits/swr/2011/schoolbuses/global.pdf](http://www.osc.state.ny.us/localgov/audits/swr/2011/schoolbuses/global.pdf).

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## Ethics and Conflicts of Interest

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Generally, local governments and school districts are required to have a code of ethics that sets forth standards of conduct reasonably expected of its officers and employees.

Generally, local governments and school districts are required to have a code of ethics that sets forth standards of conduct reasonably expected of its officers and employees.<sup>49</sup> Although a code of ethics is an entity-wide document, it may be beneficial to include standards for procurement activities in your code since procurement is a function where the public and private sectors meet to conduct business. Public procurement officials need to have a clear understanding of what business practices are permissible and what ones are not. It is also important that all local government and school district officers and employees maintain high ethical standards of conduct and avoid situations where there is even the appearance of impropriety.

Among the ways in which procurement activities may be addressed in your code of ethics are by the inclusion of provisions:

- Purchasing activities are to be conducted in a manner that is in accordance with law, in the best interests of the local government or school district, avoids favoritism, wastefulness, extravagance, fraud and corruption, and fosters honest competition to obtain the greatest economic benefit for every tax dollar expended.
- Procurement officials should insist on and expect honesty in sales representation whether offered verbally or in writing, through the medium of advertising, or in the sample of a product submitted.
- Procurement officials must treat all vendors and prospective vendors fairly and equally.
- Procurement officials should discourage the offer of gifts, and decline gifts that in any way might influence or have the appearance of influencing the procurement of goods or services.<sup>50</sup>

Our office has prepared model codes of ethics which are available on our website: [www.osc.state.ny.us/localgov/pubs/codeofethics.pdf](http://www.osc.state.ny.us/localgov/pubs/codeofethics.pdf) and [www.osc.state.ny.us/localgov/firedist/modelcoe.pdf](http://www.osc.state.ny.us/localgov/firedist/modelcoe.pdf).

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<sup>49</sup> General Municipal Law, section 806.

<sup>50</sup> As discussed below, General Municipal Law, section 805-a(1)(a) prohibits municipal officers and employees from accepting gifts having a value of \$75 or more under circumstances where it could reasonably be expected or inferred that the gift is intended to influence the performance of official duties or as a reward for any official action.

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**Gifts** - Governing boards should consider providing guidance in their codes of ethics on the acceptance of gifts by local government and school district officers and employees. The law prohibits any officer or employee from directly or indirectly soliciting any gift.<sup>51</sup> It also prohibits any officer or employee from accepting or receiving any gift having a value of \$75 or more, in any form, under circumstances in which it can reasonably be inferred that the gift was intended to influence the officer or employee, or could reasonably be expected to influence the officer or employee, in the performance of his or her official duties, or was intended as a reward for any official action on his or her part.<sup>52</sup> It is a common practice for vendors in the private sector to offer tickets to sporting and other entertainment events, lunches at exclusive locations, clothing with company logos, and a variety of other perks. Municipal officers and employees with purchasing or financial responsibilities are sometimes offered such gifts. Your locality's code of ethics could supplement the prohibitions contained in the law, including addressing gifts to close relatives of officers and employees.<sup>53</sup>

**Conflicts of Interest** - Besides including guidance on the acceptance of gifts in your code of ethics, local governments and school districts also need to have a system in place for ensuring that potential conflicts of interest are identified, prohibited interests are avoided and any disclosure requirements are followed. The law limits the ability of municipal officers and employees to enter into contracts in which their personal financial interests and their public powers and duties conflict.<sup>54</sup>

Governing boards should consider providing guidance in their codes of ethics on the acceptance of gifts by local government and school district officers and employees.

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<sup>51</sup> General Municipal Law section 805-a(1)(a).

<sup>52</sup> Ibid.

<sup>53</sup> The State Comptroller's Office model codes of ethics, cited above, contain sections relating to gifts (see Model Code of Ethics for Local Governments, section 17; Model Code of Ethics for Fire Districts, section 12).

<sup>54</sup> General Municipal Law, article 18.

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Conflicts of interest can be identified by the use of disclosure forms that identify outside employment, business interests, investments or other interests.

Unless a statutory exception applies, municipal officers and employees, including purchasing officials, are prohibited from having an “interest” in contracts with the local government or school district for which they serve when they also have the power or duty, either individually or as a member of the board, to negotiate, prepare, authorize, or approve the contract; to authorize or approve payment under the contract; to audit bills or claims under the contract; or to appoint an officer or employee with any of those powers or duties. For this purpose, a “contract” includes any claim, account, demand against or agreement with a municipality, express or implied. Municipal officers and employees have an interest in a contract, including purchase contracts, when they receive a direct or indirect monetary or material benefit as a result of a contract. Municipal officers and employees are also deemed to have an interest in the contracts of: their spouse, minor children and dependent (except employment contracts); any firm partnership or association of which they are a member or employee; and any corporation of which they are an officer, director or employee, or directly or indirectly own or control any stock. As a rule, interests in actual or proposed contracts on the part of a municipal officer or employee, or his or her spouse, must be publicly disclosed in writing to the municipal officer or employee’s immediate supervisor and to the governing board of the municipality. The written disclosure must be made part of and be set forth in the official record of the proceedings of the board. Our office has designed a tutorial on conflicts of interests that is available on our website: [www.osc.state.ny.us/localgov/training/modules/protecting/one/index.htm](http://www.osc.state.ny.us/localgov/training/modules/protecting/one/index.htm).

Conflicts of interest can be identified by the use of disclosure forms that identify outside employment, business interests, investments or other interests. Counties, cities, towns and villages with populations of 50,000 or more must, and other local governments and school districts may, promulgate annual statements of financial disclosure for certain officers and employees.<sup>55</sup> Careful use of financial disclosure forms can help identify potential conflicts of interest at an early stage.<sup>56</sup>

Ensuring the highest of ethical standards in the procurement process is an important ingredient in creating a fair and competitive procurement process that makes prudent and cost effective procurements in the best interest of the locality and the taxpayer.

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<sup>55</sup> General Municipal Law, sections 810-812.

<sup>56</sup> Your legal counsel should be consulted with respect to whether any specific financial disclosure requirement for employees constitutes a mandatory term or condition of employment for purposes of collective bargaining under Civil Service Law, article 14.

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## Conclusion

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Seeking competition in the purchasing cycle isn't just a matter of ensuring compliance with laws and local policy. The people who are directly responsible for making procurement decisions should help to create a cost-conscious and thrifty procurement environment, in which seeking competition becomes intuitive and "second nature" for the organization. The benefits of seeking competition, including the potential for cost savings, should motivate a culture of competition within your procurement function. Seeking competition can be enhanced when a community of best practices, within legal parameters, is developed by each local government or school district. Participation in professional procurement groups can also assist in developing a cost-conscious atmosphere within your locality. Communication within your organization about procurement goals, laws, and local policy is also essential to enhancing your organization's expertise and commitment to seeking competition. Management can play a key role in bringing together the various factors needed to create an organizational of seeking competition.

The Office of the State Comptroller would be pleased to assist you with any questions you have regarding the information contained in this guide, or any special circumstances with which you may need assistance. The addresses and telephone numbers for each of our regional offices, and our legal staff, are located at the end of this publication. Please contact the regional office for your locality or, for legal issues, our legal staff, with any questions you may have.

**The benefits of seeking competition, including the potential for cost savings, should motivate a culture of competition within your procurement function.**

## Appendix A—Categories of Procurement

Most proposed procurements generally fit into one of the 16 categories 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.

|   | Subject to Competitive Bidding (section 103) | Local Policies and Procedures (section 104-b) |
|---|--|---|
| <b>Purchase Contracts and Contracts for Public Work if No Other Exception Applies<sup>57</sup></b>  |  |   |
| 1. Purchase Contracts – In excess of the \$20,000 Threshold   | X <sup>(a)</sup>                             |   |
| 2. Purchase Contracts – Below the \$20,000 Threshold  |  | X   |
| 3. Contracts for Public Work – In excess of the \$35,000 Threshold  | X <sup>(b)</sup>                             |   |
| 4. Contracts for Public Work – Below the \$35,000 Threshold   |  | X   |
| <b>Procurements Exempt from the Requirements of section 103 and the Quotations/Proposals Requirement of section 104-b</b>   |  |   |
| 5. Preferred Sources (State Finance Law, section 162; Correction Law, sections 184, 186)  |  | X <sup>(c)</sup>                              |
| 6. State Contracts; certain Federal contracts (GML, section 104)  |  | X <sup>(c)</sup>                              |
| 7. County Contracts (GML, section 103[3])   |  | X <sup>(c)</sup>                              |
| 8. 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). <sup>58</sup> |  | X <sup>(c)</sup>                              |
| <b>Procurements Exempt from section 103</b>   |  |   |
| 9. Emergency (GML, section 103 [4])   |  | X   |
| 10. Sole Source   |  | X   |
| 11. Professional Service  |  | X   |
| 12. True Leases   | X <sup>(d)</sup>                             | X   |
| 13. Insurance   |  | X   |
| 14. Surplus/Second-hand Materials, Supplies, Equipment from Certain Other Governments (GML, section 103 [6])  |  | X   |
| 15. Certain Food and Milk Purchases (GML, section 103 [9], [10])  |  | X <sup>(e)</sup>                              |
| 16. Certain Municipal Hospital or Nutrition Program Purchases (GML, section 103 [8])  |  | X   |

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## Appendix A—Categories of Procurement

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- <sup>57</sup> See “Monetary Thresholds” section above for discussion of making the determination of whether the monetary thresholds will be exceeded.
- <sup>58</sup> General Municipal Law, section 104-b(2)(g) provides that the procurement policy may set forth circumstances when, or types of procurements for which the solicitation of alternative proposals or quotations will not be in the best interest of the local government or school district.
- (a) As noted, a local government or school district may authorize the use of “best value” as a basis for the award of “purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law),” as an alternative to awarding to the “lowest responsible bidder.”
- (b) General Municipal Law, section 101 (the “Wicks Law”) provides additional monetary thresholds with respect to contracts for the erection, construction, reconstruction or alteration of buildings.
- (c) Although General Municipal Law, section 104-b exempts these procurements from the requirement of written or verbal quotations or proposals, each political subdivision should include in their policies and procedures a provision to ensure that use of the exception is documented and, in the case of State, county or other government contracts, that procurements from these sources are in the best interest of the unit. In the case of procurements through certain federal GSA contracts or a county contract, the law expressly requires that the local government consider whether use of the county contract “will result in cost savings after all factors, including charges for service, material and delivery, have been considered.” (see General Municipal Law, sections 103[3], 104[2]). This could be accomplished by comparisons of prices to catalogs or other market price comparisons.
- (d) School districts only, Education Law, section 1725.
- (e) School districts only.

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## Appendix B—Sample Format for Procurement Policy and Procedures

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**Instructions:** This template is a guide for local governments and school districts to utilize when developing or updating their procurement policy and procedures. The policy content and extent of required procedures, subject to the minimum statutory requirements, should be tailored to meet the needs of each locality's procurement function and should consider the costs and benefits of such procedures.

This resolution sets forth the policy and procedures of the *(Insert name of political subdivision)* to meet the requirements of General Municipal Law, section 104-b.

### Purpose

Goods and services that are not required by law to be procured pursuant to competitive bidding must be procured in a manner as to assure the prudent and economical use of public moneys in the best interest of the taxpayers; to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances; and to guard against favoritism, improvidence, extravagance, fraud and corruption. To further these objectives, the governing board is adopting an internal policy and procedures governing all procurements of goods and services which are not required to be made pursuant to the competitive bidding requirements of General Municipal Law, section 103 or of any other general, special, or local law.

### Procedures for Determining Whether Procurements are Subject to Bidding

The procedures for determining whether a procurement of goods or services is subject to competitive bidding and documenting the basis for any determination that competitive bidding is not required by law is as follows:

Procedure: *(Insert specific procedures required)*

Documentation: *(Describe documentation requirements)*

### Statutory Exceptions to Quotations/Proposals Requirements of This Policy and Procedures

Except for procurements made pursuant to General Municipal Law, section 103 (3) (through certain county contracts), section 104 (through certain State and Federal contracts), State Finance Law, section 162, Correction Law, sections 184 and 186 (from “preferred sources,” including articles manufactured in correctional institutions), or the items excepted herein (see below), alternative proposals or quotations for goods and services shall be secured by use of either written requests for proposals, written quotations, verbal quotations or any other method of procurement that furthers the purposes of the General Municipal Law, section 104-b.



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## **Appendix B—Sample Format for Procurement Policy and Procedures**

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### **Methods of Competition to be Used for Non-Bid Procurements**

The methods of procurement to be used are as follows:

*(Insert circumstances when each specific method of procurement will be utilized and procedures appropriate for the size and complexity of your locality; take into account which method will best further the purposes of General Municipal Law, section 104-b and the cost-effectiveness of the method. If the local government or school district has adopted a local law, rule, regulation or resolution, as the case may be, to authorize “best value” as a basis for awarding a purchase contract or contracts, “best value” should be indicated here.)*

### **Adequate Documentation**

Documentation of actions taken in connection with each such method of procurement is required as follows:

*(Insert specific documentation requirements)*

### **Awards to Other than the Lowest Responsible Dollar Offeror**

Whenever any contract is awarded to other than the lowest responsible dollar offeror, the reasons that such an award furthers the purpose of General Municipal Law, section 104-b, as set forth herein above, shall be documented as follows:

*(Insert specific documentation requirements, including for “best value” awards, when authorized)*

### **Items Excepted from this Policy and Procedures by the Board**

The board sets forth the following circumstances when, or types of procurements 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 *(Insert name of political subdivision or district)*.

*(Insert list of circumstances or types of procurements for which the board has determined that the solicitation of alternate proposals or quotations are not in the best interest of the taxpayers. The number of such circumstances and/or types of procurements should be limited and only where adequately justified. “Piggybacking” on certain other government contracts in accordance with the prerequisites in GML, section 103 [16] would be listed here. )*

### **Individual(s) Responsible for Purchasing**

*(Insert names and titles of the individual or individuals responsible for purchasing and their respective titles; information to be updated biennially).*

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## Appendix B—Sample Format for Procurement Policy and Procedures

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### Input From Officers

Comments have been solicited from officers of the political subdivision or district therein involved in the procurement process prior to the enactment of this policy and procedures, and will be solicited from time to time hereafter.

### Annual Review

The governing board shall annually review and, when needed, update this policy and procedures.

The *(Insert name or position of designated person)* shall be responsible for conducting an annual evaluation of the effectiveness of the procurement policy and procedures and an evaluation of the control procedures established to ensure compliance with the procurement policy, and shall be responsible for reporting back to the board.

### Unintentional Failure to Comply

The unintentional failure to comply fully with the provisions of General Municipal Law, section 104-b shall not be grounds to void action taken or give rise to a cause of action against the *(Insert name of the political subdivision or district)* or any officer or employee thereof.

### Resolution

Adopted on *(Insert date)* by *(Insert results of board vote)* vote of the governing board of the *(Insert name of political subdivision)*.

**Division of Local Government and School Accountability**

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