

Chapter 74

PROCUREMENT POLICY

[HISTORY: Adopted by the Town Board of the Town of Benton 10-12-1992. Amendments noted where applicable.]

GENERAL REFERENCES

Investment policy — See Ch. 46.

§ 74-1. Applicability of policy.

This policy is for purchases and contracts for services that are not subject to competitive bidding (General Municipal Law § 104-b).

§ 74-2. Determination of nature of contract.

- A. Every purchase to be made 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. The following items are not subject to competitive bidding pursuant to § 103 of the General Municipal Law: purchase contracts under \$10,000 and public works contracts under \$20,000; emergency purchases; certain municipal hospital purchases; goods purchased from agencies for the blind or severely handicapped; goods purchased from correctional institutions; purchases under state and/or county contract; and/or surplus and secondhand purchases from another governmental entity.
- B. The decision that a purchase is not subject to competitive bidding will be documented in writing by the individual making the purchase. This documentation may include written or verbal quotes from the vendor; a memo from the purchaser indicating how the decision was arrived at; a copy of the contract indicating the source which makes the item or service exempt; a memo from the purchaser detailing the circumstances which led to an emergency purchase, or any other written documentation deemed appropriate.

§ 74-3. Bidding requirements; exempt purchases.

All goods and services will be secured by use of written requests for proposals, written quotations, verbal quotations, or any other methods that assure goods will be purchased at the lowest price, and that favoritism or conflicts will be avoided, except in the following circumstances:

- A. Purchase agreements/contracts over \$10,000 and public works contracts over \$20,000; goods purchased from agencies for the blind or severely handicapped pursuant to § 175-b

of the State Finance Law.¹

- B. Goods purchased from correctional institutions pursuant to § 186 of the Correction Law.
- C. Purchases under state contracts pursuant to § 104 of the General Municipal Law.
- D. Purchases under county contract pursuant to § 103, Subdivision 3, of the General Municipal Law.
- E. Purchases pursuant to § 74-7 of this policy.

§ 74-4. Method of purchase.

- A. The following method of purchase will be used when required by this policy in order to achieve the highest savings:

- (1) Purchase contracts.

Estimated Amount of Purchase Contract Method Used

\$250 to \$2,999	Verbal quotations
\$3,000 to \$9,999	Written quotations/requests

- (2) Public works contracts.

Estimated Amount of Public Works Contract Method Used

\$250 to \$2,999	Verbal quotations
\$3,000 to \$4,999	Written quotations
\$5,000 to \$19,999	Written quotations
	Written request for proposals

- B. 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.

§ 74-5. Documentation of purchase required.

Documentation is required of each action taken in connection with each procurement.

§ 74-6. Award of contract to other than lowest bidder; documentation required.

Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offeror. This documentation will include an explanation of how the award

1. Editor's Note: Former § 175-b of the State Finance Law was repealed by L. 1995, c. 83, § 33. See now State Finance Law § 162.

will achieve savings or how the offeror was not responsible. A determination that the offeror is not responsible shall be made by the purchaser and may not be challenged under any circumstances.

§ 74-7. Circumstances where solicitation of alternative proposals or quotations not required.

Pursuant to General Municipal Law § 104-b, Subdivision 2f, the procurement policy may contain circumstances when, or types of 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 Benton to solicit quotations or document the basis for not accepting the lowest bid:

- A. Professional services or services requiring special or technical skill, training or expertise.
 - (1) The individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, 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.
 - (2) 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 necessary prerequisite to the performances of the services; and
 - (c) Whether the services require a personal relationship between the individual and municipal officers.
 - (3) 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; investment management services; printing servicing 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 prepackaged software.
- B. Emergency purchases pursuant to § 103, Subdivision 4, of the General Municipal Law. 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.
- C. Purchases of surplus and secondhand goods from any source. If alternate proposals are required, the Town of Benton is precluded from purchasing surplus and secondhand goods at auctions or through specific advertised sources where the best prices are usually obtained. It is also difficult to try compare prices of used goods and a lower price may indicate an older product.

- D. Goods or services under \$250. The time and documentation required to purchase through this policy may be more costly than the item itself and would 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.

§ 74-8. Purchases by Highway Superintendent.

The Town Highway Superintendent may make purchases of up to \$1,500 without approval of the Town Board so long as the cumulative effect of each of those purchases is not otherwise violative of the bidding requirements of General Municipal Law § 103, or any other pertinent statute.

§ 74-9. When effective; annual review.

This policy shall go into effect immediately and will be reviewed annually.