

ADOPTED
BY THE BROOKHAVEN TOWN BOARD

RESOLUTION NO. 2010-821

MEETING OF: July 20, 2010

AMENDING THE TOWN OF
BROOKHAVEN PROCUREMENT
POLICY AND PROCEDURES FOR
THE PROCUREMENT OF GOODS
AND SERVICES NOT SUBJECT TO
COMPETITIVE BIDDING

WHEREAS, pursuant to General Municipal Law (GML) §104-b, the Town Board of the Town of Brookhaven adopted the Town Procurement Policy and Procedures; and

WHEREAS, the Town Board is desirous of amending the Town Procurement Policy and Procedures to be in conformance with recent amendments to General Municipal Law Section 103, effective June 22, 2010, which increased the threshold requirement for the bidding of purchase contracts, commodities, from \$10,000 to \$20,000; and

WHEREAS, the Town Board is further desirous of amending Exhibit A to the Policy to state the current individuals responsible for purchasing and their respective titles, in accordance with GML 104-b.

NOW, THEREFORE BE IT RESOLVED, by the Town Board of the Town of Brookhaven that the Town of Brookhaven Procurement Policy and Procedures be amended in conformance with recent amendments to General Municipal Law Section 103, effective June 22, 2010, which increased the monetary threshold requirement for the bidding of purchase contracts, commodities, from \$10,000 to \$20,000; and be it further

RESOLVED, that the Town Procurement Policy and Procedures, Exhibit A, be amended to state the current individuals responsible for purchasing and their respective titles, in accordance with GML 104-b; and be it further

RESOLVED, by the Town Board of the Town of Brookhaven that in accordance with General Municipal Law (GML) §104-b, the Town of Brookhaven Procurement Policy and Procedures for the procurement of goods and services (commodities and public works) not subject to the formal competitive bidding requirements (GML §103) is hereby amended as set forth in the attached.

**TOWN OF BROOKHAVEN
PROCUREMENT POLICY AND PROCEDURES
To Purchase Equipment, Services, Supplies, Etc. Not
Subject To Competitive Bidding Requirements Pursuant to
New York State General Municipal Law 104-b**

I. PURPOSE

The following Town Procurement Policy and Procedures are intended to implement the provisions of General Municipal Law Section 104-b. General Municipal Law Section 104-b provides that municipalities shall adopt internal policies and procedures to govern the procurement of all goods and services that are not subject to the competitive bidding requirements of General Municipal Law Section 103.

The Town Policy and Procedures, as set forth herein, prescribe a method for determining whether a procurement of goods and services is subject to competitive bidding. The intent of such procedures is to obtain maximum value for the taxpayers' dollars by assuring maximum quality at the lowest possible cost, while guarding against favoritism, fraud and corruption. These procedures provide for methods to obtain alternative proposals and quotations for goods and services that are not subject to competitive bidding.

The Town of Brookhaven Procurement Policy and Procedures shall be reviewed annually at the Town Board's first meeting in January of each year, and revised as becomes necessary.

II. DETERMINATION OF NEED FOR FORMAL BID OR QUOTATION

A. Monetary Thresholds.

In accordance with General Municipal Law Section 103, competitive bidding is required where it is reasonably anticipated that the aggregate amount of the goods or services to be contracted for within one fiscal year will exceed the monetary thresholds under General Municipal Law Section 103 (\$20,000 for the purchase of commodities, or \$35,000 for public works or non-professional services (as defined below)).

No anticipated contract or purchase shall be divided or structured with the intent of avoiding the requirements set forth in the Town Procurement Policy and Procedures, and statutory law.

Prior to issuance of a purchase order under an approved Town of Brookhaven contract, the Purchasing Division and Finance Department must possess a **copy of the fully executed contract** as well as documentation of required insurance and contract security or performance bond, as applicable. Purchases should be made from vendors with existing Town of Brookhaven contracts, if a contract exists. In these instances, blanket purchase orders are encouraged and should be used to the extent permissible and practical.

Any purchases of \$500.00 or more (including non-professional services) must adhere to the following applicable procedures and have a Town approved purchase order or approved claim voucher, as applicable. Exceptions to this rule requiring a purchase order are expenditures for certain bills including, but not limited to, insurance, equipment leases, performance bond reimbursements, snow contractors, tax bills, permit refunds, travel reimbursements, gas, fuel oil, electric, phones, water and similar expenditures.

No purchase order or contract shall be issued for an amount that exceeds the competitive bidding thresholds stated above prior to undertaking the formal bid process, except for those limited circumstances set forth under this Policy and applicable law.

The Town Board or Supervisor may direct that written submissions to a Town prepared Request for Proposal (RFP) be required for any procurement.

B. Annual Aggregate Amount.

Every non-contract purchase must be initially reviewed by the Purchasing Division to determine whether it falls into the category of a commodity purchase or a public works procurement request. Once that determination is reached, a good faith effort must be extended to determine whether it is known or can reasonably be expected that the annual aggregate amount to be spent on the commodity or service exceeds the competitive bidding thresholds.

Annual aggregate purchases shall be evaluated to determine cumulative dollar amounts expected within a given fiscal year. As necessary, user Departments' anticipated requirements will be evaluated in an attempt to determine yearly values of commodities and/or services. In addition, past history will also be taken into consideration in evaluating the yearly cost associated with the purchase of commodities and services.

If it is expected that the bid limit will be exceeded for any one type of non-contracted commodity or service, completion of the formal bid process shall take place. The decision to require the formal bid process shall rest with the Director of Purchasing.

III. AUTHORITY OF THE DIRECTOR OF PURCHASING

The Director of Purchasing shall serve as the Town purchasing official and shall be responsible for the procurement of commodities and public works in accordance with the Town Policy and Procedures. The Director of Purchasing, or his/her duly authorized designated signatory on behalf of the Director as stated in Exhibit A, is authorized to award contracts for the procurement of commodities, services, and public works, procured in accordance with this Policy, which are below the competitive bidding requirements of General Municipal Law Section 103. Further, the Director of Purchasing, or named authorized designated representative, is authorized to award all purchase (supplies, equipment and materials) contracts over the \$20,000 limit to the lowest responsible bidder in accordance with the requirements of General Municipal Law Section 103, subject to approval as to form by the Town Attorney. The Division of Purchasing staff, as listed in Exhibit A, is authorized to assist the Director in facilitating the procurement of commodities and public works and non-professional services in accordance with this Policy.

IV. DEFINITIONS

For the purpose of the Town Procurement Policy and Procedures, the following terms shall have the meanings as set forth herein:

Commodities -- Standard articles of commerce in the form of material goods, supplies, products, equipment or similar items with no more than incidental labor required.

Non-Professional Services -- Performance of a task (labor) that may include providing incidental materials in connection with said service.

Professional Services -- Services requiring specialized skill, training, knowledge, expertise and technical skill, and involving the exercise of professional judgment and discretion.

Public Works Projects -- Contracts for services, labor, construction, repairs and/or maintenance or other work, including the furnishing of supplies or materials incidental to the work.

Purchase Orders -- Official documents that evidence the expenditure as authorized by the Director of Purchasing for a commodity, public work or service on a one-time basis or multiple purchases or blanket order, as may be applicable.

V. PROCEDURES FOR COMMODITIES PURCHASES

\$0 up to \$500 -- Purchases of less than \$500.00 should be made with the Town-issued P-Card, if possible (refer to the separately stated P-Card Policy for compliance and **stipulate tax exempt status**), or a purchase order or claim voucher if not using the P-Card. A claim voucher must include an invoice upon submission to the Finance Department.

\$500 and over -- Purchases of \$500.00 and up to \$1,000 are at the discretion of the Director of Purchasing in accordance with the procedures as set forth herein, who shall document such decision.

\$1,000 up to \$3,000 -- Purchases in the amount of \$1,000.00, but less than \$3,000.00 require documented telephone quotations documented on a Price Quotation Form, from three different vendors. The Purchasing Division shall maintain the records of such quotes.

\$3,000 to \$20,000 -- Purchases in the amount of \$3,000.00, and up to and including \$20,000.00, require a "Price Quotation Form." Three written/fax/internet website price quotes from three different vendors are necessary. The Purchasing Division shall maintain the records of such quotes.

Over \$20,000 -- Purchase contracts for goods involving an expenditure of greater than \$20,000, under General Municipal Law Section 103, (for one purchase OR multiple purchases of a particular item within the calendar year) shall require competitive bidding.

VI. PROCEDURES FOR PUBLIC WORKS PROJECTS AND NON-PROFESSIONAL SERVICES

\$0 up to \$500 -- Purchases of public works or services in amounts less than \$500.00 should be made with the Town-issued P-Card, if possible (refer to the separately stated P-Card Policy for compliance and **stipulate tax exempt status**), or a purchase order or claim voucher if not using the P-Card. A claim voucher must include an invoice upon submission to the Finance Department.

\$500 up to \$3,000 -- Require the recommendation of the user Department and the approval of the Purchasing Director. The user Department shall provide the Purchasing Director with a written explanation as to the need for the services.

\$3,000 up to \$5,000 -- Non-professional services performed on a single project and/or public works projects in the amount of \$3,000.00 but less than \$5,000.00 require three telephone quotes documented on a "Price Quotation Form." The Purchasing Division shall maintain the records of such quotes.

\$5,000 to \$35,000 -- All public works or services in the amount of \$5,000.00 and up to and including \$35,000.00 require submissions to a Town prepared Request for Proposal (RFP) or a "Price Quotation Form" with at least three written/fax/internet website quotes from three different vendors or providers of the service. The Purchasing Division shall maintain the records of such quotes.

Over \$35,000 -- Public works or services involving an expenditure of greater than \$35,000.00, under General Municipal Law Section 103, (for a one time service purchase OR multiple purchases of a particular service within the calendar year) shall require competitive bidding.

VII. COMPLIANCE AND DOCUMENTATION

All requests for written and/or faxed quotations shall be documented by numbering and filed in the Town Purchasing Division along with the purchase order. Purchase orders will be issued to the lowest responsible and responsive vendor, except as authorized pursuant to this Policy and Procedures, the Town Code Chapter 7 "Bidding Preferences", and applicable law. Purchases shall comply with Town Code Chapter 7B "Green Procurement", as applicable. The proper written documentation and justification setting forth the reasons for the issuance of a purchase order or contract to a vendor other than the lowest priced vendor shall be required.

A good faith effort shall be made to obtain the required number of quotations. If for any reason the user Department or Purchasing Division is unable to obtain the requisite number of quotations, the user Department or Purchasing Division shall properly document in writing the reasons why, and the efforts made to obtain the required written quotes.

In such cases, the user Department shall further provide the Purchasing Director with a written explanation as to the need for the goods or services. The Director of Purchasing shall not approve any purchase order or contract without such documentation, and the Purchasing Division shall further maintain such records with a copy of the approved purchase order or contract.

A documented inability to obtain the requisite number of quotations shall not be a bar to authorizing the procurement. Semi-annually the Director of Purchasing shall provide a report to the Town Board setting forth those procurements issued in the amount of \$5,000 and more, but below the competitive bidding thresholds, where a purchase order or contract was awarded to a vendor other than the lowest priced vendor or the number of required quotations were not obtained.

The report shall include, but not be limited to, the reasons that the purchase order or contract was awarded to other than the lowest priced vendor or awarded without obtaining the required number of quotes, the dollar amount involved, the goods or services acquired, and the company, entity, that provided the goods or services.

In certain limited circumstances or for certain limited types of procurements for commodities or services below the competitive thresholds, where the solicitation of alternative proposals or quotations will not be in the best interest of the Town due to emergencies, past history, quality and reliability of the goods or services, projected cost comparison and market standard, the Director of Purchasing is authorized to approve purchase orders without obtaining telephone, written, and/or faxed quotations. In those limited circumstances, full documentation shall be required explaining the reason(s) that quotes are not necessary for that particular purchase. These reasons must include a projected cost comparison between the unsolicited quote and the market standard, (see Section IX.B., Reasonableness Policy). Except for sole source procurements, the Deputy Supervisor must review and approve, in writing, the reason for approving a purchase order without obtaining quotes for a particular purchase.

UNDER NO CIRCUMSTANCES SHALL A QUOTATION THAT EXCEEDS GENERAL MUNICIPAL LAW SECTION 103 BID LIMITS BE AWARDED PRIOR TO A FORMAL BID TAKING PLACE, EXCEPT AS SET FORTH HEREIN.

VIII. EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS

A. Professional Services:

Contracts for services that involve specialized skill, training, knowledge, expertise, technical skill and the use of professional judgment are considered "professional services" contracts, which are excluded from the competitive bidding requirements of General Municipal Law Section 103. Examples of professional services include, but are not limited to, accountants, architects, attorneys, and engineers. The following sets forth the procedures and requirements for the procurement of professional services.

Professional service consultants (herein Consultants) shall be authorized pursuant to the Town Board's authorized list of Professional Consultants adopted by Resolution at the Town Board's annual organizational meeting or pursuant to a specific Town Board Resolution. It is the intent of the Town Board to develop this authorized list through submissions received in response to a Town prepared Request for Qualifications (RFQs).

Professional Service Requisitions (PSRs) shall be prepared by the requesting Department and shall be further approved by the Department Commissioner, the Town Engineer, as may be applicable, the Department of Finance and the Supervisor or Deputy Supervisor.

Town Board approval shall be required for any PSR issued to an authorized Professional Service Consultant for a non-capital project in an amount of \$5,000.00 or greater amount, or for a capital project in an amount of \$25,000.00 or greater. Additional Town Board approval shall be required for the following: (1) any requested monetary increase to a PSR that required prior Town Board approval; or (2) where the combined totals of the PSRs for a specific project would exceed the aforementioned amounts.

PSRs issued for a non-capital project in amount less than \$5,000 or for a capital project in an amount of \$25,000 or less shall require a written justification from the requesting Department. This justification shall include a representation by the Commissioner of the requesting Department that the price is reasonable given current market conditions and that the work is necessary. The Finance Department shall maintain this documentation with the authorized PSR.

Comparative pricing shall be required where a particular project is anticipated to **exceed \$5,000.00 for non-capital projects or \$25,000.00 for capital projects** and the following procedures shall be adhered to:

The requesting Department must seek written comparative pricing either through a Request for Proposal (RFP) or by securing pricing, from at least three firms, that are capable of providing the service in response to a Department developed scope of work. This process is intended to ensure that the Town is receiving competitive pricing and to prevent the appearance of favoritism toward any particular individual or firm. The Purchasing Division shall maintain the records of all written RFPs or written price quotes.

Upon selecting a qualified professional service consultant the requesting Department shall prepare a PSR, including summary of the RFP submissions or comparative pricing, which shall be attached to the Town Board worksheet resolution form, as may be applicable. The requesting Department Head shall set forth the need for the service requested, the basis for the selection of the professional consultant, including but not limited to the qualifications of the selected firm to provide the services. The PSR shall be forwarded to the Department of Finance for budgetary review and approval and, as applicable, the Finance Department shall prepare the necessary Town Board worksheet resolution form authorizing the PSR expenditures.

Where the professional services require a uniquely qualified consultant or other providers do not possess the equivalent expertise or knowledge, then upon a Department Head's written request with supporting documentation, setting forth specific

and adequate justification for the particular professional consultant and upon the Supervisor or Deputy Supervisor's written approval, the worksheet resolution form to approve the PSR, as applicable, may be submitted to the Town Board for approval without first obtaining comparative pricing. The written request of the Department Head shall be included as supporting documentation to the Town Board resolution.

B. Emergencies.

In the event of a public emergency the Department Head in consultation with the Director of Purchasing and Deputy Supervisor may proceed with the procurement of commodities, supplies, equipment or materials or public works without obtaining bids or solicitation of written proposals or quotations. For purposes of this section, an emergency arises out of an accident or unforeseen or dangerous condition or occurrence that affects public property or the life, health, safety, welfare or property of Town residents or the public or threatens, curtails or terminates an essential service to Town residents or the public, which situation requires immediate attention, and cannot await competitive bidding.

The Department Head shall advise the Deputy Supervisor of the emergency and obtain the Deputy Supervisor's approval in writing. Documentation as to the nature of the emergency and Deputy Supervisor's written approval authorizing the procurement of the required commodities, services or public works shall be submitted to the Purchasing Division within three (3) days. Further, the Department Head shall endeavor to comply as closely as possible with the Town Procurement Policy. Upon receipt of the required documentation and the Deputy Supervisor's written approval, the Purchasing Director shall authorize the emergency expenditure as applicable. Payment for the emergency procurement shall be in conformance with the Town Procurement Policy.

C. Sole Source Procurement.

Sole source procurement is one in which only one vendor can supply the commodity, technology and/or perform the services required and there is no substantial equivalent. Procurement by this method must be documented by the submission of a Sole Source Approval Form, signed by the Department Head setting forth the following:

- (i) The unique nature of the requirement;
- (ii) The basis upon which it was determined that there is only one known vendor able to meet the need (i.e. the steps taken to identify potential providers); and
- (iii) The basis upon which the cost was determined to be reasonable (i.e. a fair market price was inferred based upon the sole source provider's product catalogs, published price lists and the like).

D. Equipment Leases.

Before any commodity or equipment lease is negotiated or signed, the lease must be forwarded to the Purchasing Division for review and approval. The Law Department shall review and approve all leases prior to execution by the Director of Purchasing.

E. Governmental Sources.

Governmental procurement sources for commodities and service requested by the user Departments shall be investigated and utilized in accordance with applicable law, to the extent possible. These sources include the Federal General Services Administration (FGSA), the New York State Office of General Services and Suffolk County contracts, BOCES and surplus and second hand purchases from other governmental entities. Additionally, commodities and/or services shall be procured from preferred sources, pursuant to State Finance Law Section 162. The Purchasing Division shall obtain and maintain a current list of preferred source providers from the NYS Office of General Services. Procurements shall be in compliance with the Office of General Services' "NYS Procurement Bulletin – Preferred Source Guidelines".

IX. OTHER RELATED POLICIES

A. Change Orders.

Change orders shall be authorized in the same manner as the awarded contract. When a change order increase would result in an aggregate change of at least 10% of the original contract award AND the increase amount is at least \$2,000.00, then a Public Contract Change Order Approval Form must be fully executed.

The Department requesting a change order shall document, in writing, that the requested change order does not constitute a new undertaking and/or alter the essential identity or main purpose of the contract for the commodities or services provided.

Pursuant to Town Board Resolution No. 723-08 "Town Capital Improvement Policy and Standard Operating Procedures", the Commissioner of an authorizing user Department, with the approval and concurrence of the Deputy Supervisor and the Commissioner of Finance shall be authorized to approve a change order, not to exceed the lesser amount of 10% of the contract cost or \$50,000, where an emergency and/or extenuating circumstances arise that would endanger the health, welfare or property of the Town and/or its residents or a delay of the project/work stoppage would result in a financial detriment to the Town. The Commissioner of the authorizing user Department shall document, in writing, the emergency or the extenuating circumstances pertaining to the change order.

B. Reasonableness Policy for Certain Invoice Payments.

In certain limited instances due to extenuating circumstances where the procurement of goods or services are made without a purchase order and/or not under a Town contract, the Town has developed an invoice reasonableness policy governing invoice payment.

The following sets forth the Town standards and guidelines regarding the Purchasing Director's determination as to the reasonableness of the cost of commodities or services, procured by the Department Head without obtaining the prior approval of the Director of Purchasing, or the procurement of commodities and/or services under an authorization exception to General Municipal Law.

Based on the following factors a written determination will be made as to whether the particular commodity purchased and the cost of the items/ services procured are reasonable.

- The acceptable pricing amount is determined in accordance with established industry pricing and the Town Procurement Policy.

- In some situations, when there is a contract for an item of a similar nature, that information may be used to determine price reasonableness.
- In cases of highly specialized purchases, there may be a reliance on the expertise of the Department that procured the commodity or service. This determination must be in writing.
- It is required that the Department review and sign the invoices prior to submission for reasonableness approval and payment, and submit a detailed written justification for requiring the procurement.
- Upon a determination that this reasonableness policy has been met, the Purchasing Division signs the invoice and forwards it to the Finance Department for payment.

EXHIBIT A

<u>NAME</u>	<u>TITLE</u>
Cassy Caputo	Director of Purchasing
Natalie Jekel Cora Spinelli	Sr. Purchasing Agent – Sr. Purchasing Agent - Duly Authorized Designated Signatories on behalf of the Director of Purchasing
Geri Manzolillo	Principal Stenographer - Bids & Contracts
Patricia Mazzei	Purchasing Technician - Bids & Contracts
Christine Brown	Principal Purchasing Agent - Procurement & RFP's
Scott Rasmuson	Purchasing Technician - Procurement
Thomas Walter	Purchasing Technician - Procurement
Christine Williams	Purchasing Technician - Procurement
Procurement for Office of the Superintendent of Highways for Purchase Orders and Requisitions Only	
John Rouse Brian Oakley Lori Baldassare	Superintendent of Highways Deputy Superintendent of Highways Deputy Superintendent of Highways Authorized Signatories on behalf of the Director of Purchasing
Carol Dadado	Accountant - Procurement
Karen Wooley	Purchasing Technician - Procurement