

ELMA PUBLIC LIBRARY
PROCUREMENT POLICIES AND PROCEDURES AS REQUIRED UNDER
GENERAL MUNICIPAL LAW SECTIONS 103 and 104-B.

STATEMENT OF PURPOSE

The purpose of these policies and procedures is to protect taxpayers by assuring that competition is sought in a reasonable, cost-effective manner for all Elma Public Library (EPL) procurements where practicable and required by law. Goods and services that are not required by law to be procured pursuant to competitive bidding must be procured in a manner to assure the prudent and economical use of public moneys, 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" as required by New York State General Municipal Law (GML) §104-b.

The EPL at its discretion may utilize the services of the Buffalo & Erie County Public Library Public Library Business Office, following Buffalo & Erie County Public Library Procurement Policies, to undertake procurement on behalf of the EPL for some or all of the situations addressed in this policy. The policies and procedures below apply when the EPL itself undertakes a procurement activity.

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(REF., GML §§ 103,104,104-b)

Bidding Procedures

When analyzing a request for acquisition of goods and services, an initial determination must be made as to whether a particular procurement is subject to competitive bidding. Some preliminary issues should be considered: Is the proposed procurement a purchase contract or a contract for public work? Is the amount requested above the applicable limit provided by law? Do any exceptions apply (e.g. state contract, sole source, and/or public emergency)?

Bidding Guidelines

GML §103 requires advertised bidding for procurements over \$20,000 for general commodities/services (Purchase Contract), and \$35,000 for public work. Although not defined in GML §103 the Office of the State Comptroller has expressed the opinion that the term "purchase contract" applies to the procurement of commodities (e.g. equipment, materials, supplies, and some services), while the term "contract for public work" encompasses contracts for services, labor and construction (see 1987 Opns St Comp No. 87-46, p 70: 1979 Opns St Comp No. 79-762, p160). If it is determined that competitive bidding (GML §103) is not applicable for an acquisition, documentation must justify how the decision was reached.

Procurements of commodities/services between \$5,000 and \$20,000 and contracts for public work between \$5,000 and \$35,000 are subject to the informal bid process. Procurements between \$1,000 and \$5,000 may be undertaken using verbal, telephone, fax, written, or single source quotations. Procurements under \$1,000 may be undertaken using the Library requisition

for equipment and non-stock items process.

Consideration must be given to acquisitions made of the same or similar items over the course of the fiscal year where the aggregate value may exceed the competitive bidding threshold. Orders that may exceed \$5,000 over the course of the year must follow the informal bid process unless those purchases are made off current available County, State, Federal or other Municipal contracts or for other reasons bidding is not practical. Multiple purchase orders to one vendor will be allowed if that vendor has an existing Contract with the EPL/covering said purchases. All others need to comply with the applicable procedures herewith.

Formal Competitive Bid Process

On purchases of \$20,000 and greater for commodities/services, and contracts for public work greater than \$35,000, the formal sealed bid process must be used. Bid specifications are prepared by the requesting unit and the EPL Director. Each formal bid is advertised in a newspaper with a circulation of 50,000 or greater covering the EPL's chartered service area. In addition, all formal bids are advertised on the Internet and can be downloaded by interested parties and prospective bidders accordingly.

In determining the necessity for competitive bidding, the aggregate amount to be expended in a fiscal year for an item or commodity to be purchased, or for the same type or similar public work, must be considered. It is established that the purpose of the bidding statutes may not be frustrated or avoided by artificially splitting or breaking up contracts into lesser agreements, or entering into a series of agreements, for sums below the bidding limitations. As a general rule, items or work of the same or similar nature which are customarily provided by the same vendor or contractor should be treated as a single item for the purposes of determining whether the dollar threshold will be exceeded (see, e.g., 1992 Opns St Comp No. 92-46, p115).

Informal Bidding Process

Purchases of commodities and/or services between \$5,000 and \$20,000 and contracts for public work between \$5,000 and \$35,000 will be procured by the EPL Director using bids first obtained from three sources where practical. Deviations from this policy must be approved by the Director in writing, which shall become part of the purchase documentation. Purchase requisitions and/or inquiry bid files or items within this threshold will include a notation indicating the names of at least three vendors who were contacted, the name of the individuals quoting for the firm, the date contacted, and the prices quoted by the vendors. A contract award will be to the lowest responsible bidder. Informal bids may be sealed (written), facsimile (fax), or telephone quotes at the Director's discretion. Any exceptions to this process must be documented pursuant to the *Responsibilities/Exceptions* section of this policy.

Special Purchase Situations

In other instances where it is determined competitive bidding is not required, such as emergencies, sole source procurements, or professional services, written justification must be attached to the file. The following is a description of procedures for making these types of procurements.

Sole Source (No-Bid) Contracts: When circumstances are presented to the Director, which serves the public interest indicating valid reasons that a request can be met by only one qualified vendor, the Director may waive the bidding requirement. Goods and services, which

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may be procured from only one source, are defined as "sole source" items. It is important to note that there must be a single supplier of the item or service and there are no substantial equivalents. Sole source situations generally exist when an item is manufactured by only one firm, and a vendor has the exclusive franchise or distributorship for an item.

To initiate a sole source purchase, Director's staff must be confident that conditions exist in the marketplace such that the requested goods or services are available from only one supplier and no substantial equivalents exist. In making these determinations, the Director will document the unique benefits to the EPL of the item or service as compared to other products available in the marketplace. (See, gen.,1988 Opns St Camp No. 88-35, p 65)

Even though there is only one source of supply, the Director's staff must still obtain a quotation for the vendor. Upon receipt of the properly executed quotation (written, fax, e-mail), the staff will then proceed to write the purchase order.

Since market conditions change over the years, a previously substantiated sole source may find new entrants to a formerly monopolized market. All sole sources should be verified. It can be a situation where the staff knows the marketplace has changed or it simply may be the need to verify the marketplace has not changed. It is understood that the mere likelihood that only one firm will bid is insufficient to justify sole source procurement. {1983 Opns St. Comp. No 83-124, p156)

Emergencies: GML 103(4), provides that purchases may be made without competitive bidding in the event that a public emergency arises due to an accident or other unforeseen occurrence. Emergencies do not include situations caused by a lack of planning on the part of the EPL unit. While it will be the EPL unit that requests an emergency purchase, the EPL Director with approval of the EPL's legal counsel will determine if it qualifies as an actual emergency. EPL legal counsel will determine if the statutory criteria are met on a case-by-case basis. If approved, the EPL Director may issue an emergency declaration.

When circumstances support an emergency procurement, the requesting unit must submit the required written emergency declaration for the EPL Director or his/her designee. The requesting unit and/or Director's staff must then locate a source for the required goods or service. The goal must always be to obtain the lowest price from the vendor who can best meet the delivery requirements. If the item is included in a EPL and/or Buffalo & Erie County Public Library or Erie County contract listing, the contract vendor should be contacted first. Once the sources and price have been established, an emergency purchase order will be processed. It should be noted that in the event of a contract for services, the emergency contract will not exist for a term beyond the reasonable limits of the existence of the emergency situation. Similarly, in the case of an emergency involving the acquisition of commodities, the quantity acquired will be no more than needed to address the emergency situation at the time.

The procurement procedure will be the same as a routine informal or formal bid except that advertising and bidding is not required. The purchase order must state "Emergency purchase approved by (Name), EPL Director." A copy of the EPL Director's written emergency declaration must be attached to the purchase order.

Professional Services: Professional, technical or consulting services are not the type of services

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which may properly be the subject of competition based solely on the compliance with the objective, uniform standards of the bid specification, pursuant to a bid being awarded to the lowest responsible bidder. The determination of whether the professional service exemption is applicable must be made on a case-by-case basis, examining the particular services needed. Generally professional services include, but are not limited to, the specialized expertise of interpreters, consultants, attorneys, engineers or architects.

Contracts for professional, technical or other consultant services having a value of \$20,000 or more are procured by the use of Requests for Proposals (RFP). The EPL Director's staff, subject to the review and approval of the Director, shall advertise the Request for Proposals (RFP), and designate a committee of three to review the proposals and choose a vendor. RFPs are distributed to interested parties and are advertised on the Internet and can be downloaded by interested parties and prospective proposers accordingly. Though not required, the EPL may also advertise in trade publications. The review committee or staff designee will select a vendor from the responses received and create a proposal to submit to the EPL Director for review and recommendation to the EPL Board of Trustees, which upon review and by Resolution may provide approval to contract.

Contracts for legal counsel and professional, technical or other consultant services related to the EPL legal issues having a value of \$20,000 or more shall be subject to review by the EPL Director, who may utilize an RFP process or submit written justification for the contract which shall be reviewed by the EPL Board of Trustees, which upon review and by Resolution may provide approval to contract.

Contracts for professional, technical or other consultant services having a value of less than \$20,000 shall be subject to review and approval by EPL Director, who may, within the limits of the appropriations provided therefore, contract for said services.

True Lease: Leases for real property shall not be considered a purchase or contract. True lease agreements are neither purchases nor contracts for public works and, thus, are not subject to competitive bidding under GML 103 (Exley v Village of Endicott, 21NY2d 426, 434 NYS2d992). Lease agreements require the EPL Director's authorization before any procurement activity can begin. Documentation for the leasing versus purchasing decision should be made and should include a cost benefit analysis. Final approval to authorize entering into a lease with an annual value of under \$20,000 shall be by the EPL Director. Final approval to authorize entering into a lease with an annual value of \$20,000 or more shall be by Resolution adopted by the EPL Board of Trustees. The competitive bidding statutes cannot be circumvented by casting an agreement which is truly a purchase or a contract for public work in terms of a lease.

Insurance: Insurance requirements for vendors are to be reviewed and approved by the EPL's legal counsel on a periodic basis. The purchase of insurance is to be conducted through the EPL Director or her/his designee in consultation with the EPL's legal counsel.

Second Hand Equipment acquired from other government agencies: The requesting EPL unit must have approval from the appropriate outside government official as well as budgetary approval from the Director before the purchase of surplus and second hand supplies, material or equipment is initiated. The EPL Director will verify that the purchase price is fair through market price comparisons via industry publications and other procurement sources.

Competitive bidding is not required according to GML §103 (6) (21 Opns St comp, 1965, p 615).

Single Source Purchases (\$1000 to \$5000)

For purchases between \$1000 and \$5000, the EPL Director has the option to award a purchase order to a single source vendor, usually recommended by the requesting unit. It is the Director's responsibility to ensure that the purchase price is fair through price comparisons from available sources. If there is reason to believe that the price quote is not within an acceptable range for the product or products in question, the Director may request an informal quote or bid using the Informal Bidding Process.

Single Source Purchases Under \$500

The EPL Director and either the Board President or Treasurer are allowed to make purchases of less than \$500 without prior Board approval.

Exempted from GML 103, 104-b

Procurements from Industries for the Blind or Industries for the Disabled (NYSID - See also State Finance Law, §162), New York State Correctional Industries (CORCRAFT - See also Correction Law, §§ 184,186), and Federal, State, or Local contracts are exempted from GML 103 competitive bidding and GML 104-b purchasing policies. Although General Municipal Law exempts these types of purchases from the requirements of written or verbal quotations, use of the exemption must be documented with relevant information and/or copies of Federal, State or Local contracts.

Responsibilities/Exceptions

The Director is the responsible Purchasing Agent for the EPL. The Director and EPL staff are responsible for following the policies and procedures described herein and all relevant laws as they pertain to competitive bidding. (GML §104-b (2)(f)). If an award is made to a vendor other than the lowest price offered, written documentation stating the basis for such award and a justification that the award is in the best interest of the EPL, must be provided to and retained by the EPL Director.

Updating Policies and Procedures

The EPL Board of Trustees shall review this policy and procedures at least annually and shall solicit comments from the EPL Director (GML §104-b (3),(4)).

Unintentional Failure to Comply

The unintentional failure to comply with the provisions of GML 104-b shall not be grounds to void action taken or give rise to a cause of action against the Elma Public Library or any officer or employee thereof. (GML §104-b (5))

DOCUMENTATION PROCEDURES

QUOTES – MINIMUM INFORMATION REQUIREMENTS - At a minimum, all quotations should include the date, item description, name of the vendor and vendor's representative, vendor contact information.

VERBAL/TELEPHONE QUOTES - The information is recorded on the purchase order and becomes part of the purchasing document.

SINGLE SOURCE QUOTES - The Director, or his/her designee, will solicit one written, faxed, or verbal quotation. Written or faxed quotations are attached to the file copy of the purchase order. All verbal quotations will be documented on the purchase order in accordance with the above verbal/telephone quotes procedure.

WRITTEN QUOTES - When utilizing written quotes, where practicable a minimum of three quotations should be solicited and documented. "Request For Quotation" or "Informal Bid Request" forms will be used and attached to the file.

FAX QUOTES - Fax quotes may be accepted for any quotation under \$20,000 for commodities/services and under \$35,000 for contracts for public work.

PRICE VERIFICATION - Director's staff is required to verify New York State contract pricing when applicable and practical. If price lists are not available through NYS OGS, Director's staff must receive pricing from the vendors and shall include some written affidavit of price validity.

BID LANGUAGE (Extensions/ Alternate submissions) - When bids are to be used in multiple time periods and/or for multiple orders requiring the vendor to hold pricing, it is mandatory that language in the bid document states the intention to do the same. The language must be clear and concise and should leave no doubt with respect to its intended use. The same holds true for the alternative bid submissions. The language must be clear and if the alternates are to be accepted, the Director should make every effort to notify all potential vendors of our acceptance of the same.

POST BID NEGOTIATIONS - Post bid negotiations are the responsibility of the Director or his/her designee. EPL units are not permitted to assume this responsibility.

REQUEST FOR PROPOSALS - RFPs are used for obtaining professional, technical and consulting services (which may or may not include legal services). The requesting EPL unit is responsible for submitting specifications to the EPL Director for review. If it is determined that the service is not biddable, the EPL Director may proceed in accordance with State and local laws. Evaluations are conducted in accordance with process described in the *Professional Services* section of this policy.

Approved November 17, 2015. This policy supersedes the procurement related stipulations of all previously adopted Board resolutions.

Reviewed and approved with no amendments, March 9, 2021.