

**PROCUREMENT POLICY AND PROCEDURES FOR THE TOWN OF HURLEY**  
**Adopted October 17, 2023**

**Section 1. Policy Intent.**

This Procurement Policy is adopted pursuant to the provisions of General Municipal Law §104-b, and Chapter 35 of the Hurley Town Code. The purpose of this Policy is to define the circumstances under which supplies, and equipment and public works contracts may be let in the Town of Hurley when those goods and services or public works are not required by law to be procured pursuant to the competitive bidding requirements of §103 of the General Municipal Law. These policies and procedures have been adopted 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, and to encourage the purchasing of products that have a lower environmental impact.

**Section 2. Evaluation of Purchases.**

- a. Every prospective purchase of goods 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 shall 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 the competitive building requirements of General Municipal Law (“GML”) §103, taking into account past purchases and the aggregate amount to be spent in a year.
- b. The following items are not subject to competitive bidding pursuant to Section 103 of the General Municipal Law: purchase contracts of \$20,000 or less and public works contracts of \$35,000 or less; emergency purchases (pursuant to GML §103(4)); certain municipal hospital purchases; goods purchased from agencies for the blind or severely handicapped; goods purchased from correctional institutions; purchases under State and County contracts; purchase contracts, that are from sole source providers (a sole source provider being a provider or vendor that has been determined to be the only source of the goods or services that are to be obtained or provided); surplus and second-hand purchases from another government entity; leases of equipment with operators under the control and supervision of Town officers and employees, professional services; and insurance.
- c. Where a procurement of items or services is subject to formal public bidding, the Town Board shall approve the solicitation of bids and the bid award, the bidding procedures shall be conducted through the office of the Clerk in accordance with GML Sec. 103, and the Clerk shall maintain the procurement record including specifications, affidavit of publication, record of bids received, record of bid award, and contract.
- d. The decision that a purchase is not subject to competitive bidding will be documented in writing by the individual making the purchase. This document may include written or verbal quotes from vendors, 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 that is appropriate. If the purchase is

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approved for the contractors awarded by resolution of the Town Board, the Town Board shall state the reason why the purchase was not subject to competitive bidding.

- e. Installment purchase contracts for equipment, machinery and apparatus are subject to competitive bidding requirements and for compliance with this procurement policy. Lease arrangements, where the purchase price is less than a reasonably accurate estimate of fair market value of the equipment at the time of purchase, so that a component of the annual rental charge is really an installment payment towards the purchase of the equipment including arrangements where there is a normal purchase price or where title will automatically pass, is to be considered an installment purchase.
- f. Where a true rental or lease agreement includes provision for separate service or maintenance charges in addition to rental charges, the service and maintenance aspect constitutes a separate public works contract subject to competitive bidding requirements and compliance with this procurement policy. However, where service and maintenance are purely incidental to the rental agreement and no separate charge is fixed, competitive bidding would not be involved.

**Section 3. Environmental Preference.**

- a) Where the Town of Hurley is procuring a commodity or service, whether by competitive bid or other type of procurement, that is the subject of a GreenNY procurement specification that has received final approval of the NYS GreenNY Council pursuant to Executive Order No. 22 (2022), the Town shall follow the GreenNY procurement specification to the maximum extent practicable and where cost is reasonably competitive as defined in General Municipal Law § 104-a. GreenNY approved procurement specifications can be found online at: <https://ogs.ny.gov/greenny/approved-greenny-specifications>.
- b) To the extent practicable and taking into account the need to foster competition in the best interests of the municipality, specifications shall include the following:
  - (1) products and services which consume the least amount of energy in their manufacture, use and disposal. Where possible, ENERGY STAR® qualification and/or an equivalent elevated measure of efficiency shall be a minimum requirement in any energy-consuming equipment, device, vehicle or appliance purchase;
  - (2) products and services which incorporate products which are made from sustainable materials, and/or contain a significant level of recycled or reprocessed material and which contain lower transportation costs;
  - (3) wood and wood products that are certified to be sustainably harvested by a comprehensive, performance-based certification system;
  - (4) products which are minimally packaged using recycled, recyclable or biodegradable packaging materials;

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- (5) products which reduce impacts on the environment during manufacture, use or disposal;
- (6) products and services which reduce or eliminate health risks to employees and/or citizens in their manufacture, use or disposal. In particular, products that contain chlorine, PVC, and/or emit unhealthy levels of chemical emissions during use should be avoided;

**Section 4. Methods for Securing Goods and Services.**

- a. All goods and services not subject to competitive bidding will be secured by use of written requests for proposals, written quotations, verbal quotations or any other method that assures that goods will be purchased at the lowest price and that favoritism will be avoided. Whenever possible, requests or quotations will be solicited for local vendors and contractors.
- b. The following methods of purchase shall be used when required by this policy in order to achieve fair and reasonable pricing and the highest savings:

Purchases	<u>Method</u>
\$0 to \$2,000	Oral request for the goods and oral/fax/quotes from at least two vendors, so long as there are sufficient funds currently available in the budget.

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\$2,001 To \$5,000	Written/fax/quotes from at least three vendors.
\$5,001 to 20,000	Written RFP and written quotes from at least three vendors.
Over \$20,000	Competitive bids pursuant to General Municipal Law Section 103 after obtaining authorization from Town Board.
<u>Estimated amount of public works contracts</u>	<u>Method</u>
\$500 to \$3,000	Oral request for the goods and oral/fax/quotes from at least two contractors.
\$3,001 to \$25,000	Written/fax/proposals from at least three contractors.
\$25,001 to \$35,000	Written RFP and written/fax/proposals from three contractors.
Over \$35,000	Competitive bids pursuant to General Municipal Law Section 103 after obtaining authorization from Town Board so long as there are sufficient funds currently available in the budget.

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- c. Any written RFP shall describe the desired goods, quantity and the particulars of delivery. The purchaser shall compile a list of all vendors from whom written/fax/oral quotes have been requested and the written/fax/oral quotes offers.
  - d. 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 procurement.
  - e. All information gathered in complying with the procedures of this policy shall be preserved and filed with the documentation supporting the subsequent purchase or public works contract.
4. No purchase or contract of purchase shall be made or entered into without budgetary authorization and, in the case of purchases in excess of \$5000, authorization by the Town Board.
5. The lowest responsible proposal or quote shall be awarded the purchase or public works contract unless the purchaser prepared a written justification providing reasons why it is in the best interest of the Town and its taxpayers to make an award to other than the low proposer. If a proposer is not deemed responsible, facts supporting that judgment shall also be documented and filed with the records supporting the procurement. In order to minimize and/or preclude these situations, it is expected that the purchaser would not solicit quotes from suppliers previously deemed unacceptable due to justifiable reasons.

**Section 5. Exceptions.**

The solicitation of alternative proposals or quotations shall not be required in the best interests of the municipality in the following circumstances where proper 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:

- a. **Professional services or services requiring special or technical skill, training or expertise** – The individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity and moral worth. In determining whether a service shall fit into this category, the Town Board shall take into consideration the following guidelines:
  - (1) Whether the services are subject to state licensing or testing requirements;
  - (2) Whether substantial formal education or training is a necessary prerequisite to the performance of the services; and
  - (3) Whether the services require a personal relationship between the individual and municipal officials.

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Professional and technical services shall include but not be limited to the following: services of an attorney; services of a physician; technical services of an engineer or architect 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 services involving extensive writing, editing or artwork; 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.

- a. **Emergency purchases as defined in Section 103(4) of the General Municipal Law** – Due to the nature of this exception, these goods or services must be purchased immediately where a delay in order to seek alternate proposals may threaten life, health, safety or welfare of the residents. This section does not preclude alternate proposals if time permits.
- b. **Purchases of surplus, second-hand goods and recycled products from any source where the price of such products is reasonably competitive** – If alternate proposals are required, the Town is precluded from purchasing surplus and second-hand goods at auctions or through specific advertised sources where the best prices are usually contained. It is also difficult to try to compare prices of used goods and a lower price may indicate an older product.
- c. **Goods under \$500 and public works contracts for less than \$500** – The time and documentation required to purchase through this policy may be more costly than the item itself and 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.
- d. **Sole Source** – When it can be justified that this supplier is the only source which can manufacture a product or provide a service so that there is no possibility of competition (i.e. patent, directed by law, possesses unique expertise).
- e. **Single Source** – Source identified as the result of previous standardization of a specific purchase when there are no other suppliers of that item for the Town service area.
- f. **Lease of equipment so long as the project is under the complete control and supervision of the Town** – However, in such event competitive proposals are to be solicited from vendors who can provide a similar type service when the Town wishes to make such leases or rentals in the future; and any lease or rental rates shall be subject to the prior approval of the Town Supervisor.
- g. **Piggybacking public contracts** --With the approval of the Contracting Officer as set forth in Section 6 of this policy, the Town may use a contract let by the United States of America or any agency thereof, any state or any other county or political subdivision or district therein if such contract was let to the lowest responsible bidder or on the basis of best value in a manner consistent with GML § 103 and this policy and made available for use by other governmental entities. Such contracts may be through entities other than NYS OGS or

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Ulster County only in consultation with the attorney for the Town. The Contracting Officer shall document as part of the procurement that the scope, available term, and price of the specific item procured is within the scope, available term and price of the contract made available for such use.

- h. **Option to utilize competitive bidding process** – No portion of this policy shall be construed as preventing the competitive bidding of purchase contracts under \$20,000 or public works projects under \$35,000, if so desired by the Town Board. In that event, the Town Board shall also be permitted to award purchase contracts pursuant to General Municipal Law §103(1) on the basis of best value, in accordance with Local Law No. 3 of 2016.

**Section 6. Responsible Officers and Officials.**

The following officers and officials are responsible for purchasing goods and services for the Town.

Superintendent of Highways:	Purchases related to Highway Department
Town Clerk:	Purchases related to Town Hall
Town Justices:	Purchases related to Town Court
Each Department Head:	Purchases related to their respective department.

The Responsible Officer is responsible for submitting to the Supervisor's office not less often than weekly the procurement record for completed purchases including procurement form with budget allocation, invoices and payment receipts, record of receipt by the Town and inventory control number if applicable. Copies of all written RFP's shall be provided to the Town Clerk not later than the time they are made available to vendors.

**Section 7. Budgetary Availability.**

Before purchasing any commodities or services, the Responsible Officer must confirm the availability of appropriated funds with the Supervisor. The Supervisor will maintain a record of amounts expended, amounts contracted, and amounts approved for expenditure from designated budgetary lines as reported to the Supervisor's office. In instances where a proposed purchase or contract exceeds the available appropriation balance for that line item, the expenditure shall be approved only after appropriate action is taken by the Town Board to amend the budget.

**Section 8. Town Board Approval.**

Where the cost of the item exceeds the sum of \$3,000 for public works contract and/or \$5,000 for a purchase, no officer or employee of the Town of Hurley shall purchase on behalf of the Town of Hurley, or place any order for the purchase of any item on behalf of the Town of Hurley, unless

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and until a majority of the members of the Hurley Town Board shall have voted, in advance, to approve such purchase or such order. The Town Board may from time to time authorize purchases for highway purposes up to a maximum amount specified in the resolution.

**Section 9. 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 Town of Hurley or any officer or employee thereof.

**Section 10. Notice to Vendors.**

The Town will not be responsible for purchases or orders made without prior authorization from the Responsible Officer as required by this Policy.

**Section 11. Annual Review.**

This policy shall be reviewed at least annually, unless otherwise prescribed by law.

**Section 12. Effective Date.**

This Procurement Policy shall take effect immediately upon adoption by Resolution.



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