

**HERKIMER COUNTY
POLICIES AND PROCEDURES FOR PURCHASE OF GOODS AND SERVICES**

These procedures are adopted to assure the prudent and economical use of public money, and to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost and to guard against favoritism, extravagance, fraud and corruption.

MONETARY THRESHOLDS

Purchase Contracts less than \$20,000:

\$1-\$2,000 \$1-\$5,000 Highway	At the discretion of the Purchasing Department
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\$2,001-\$10,000 \$5,001-\$10,000 Highway	Documented verbal quotes from at least three separate vendors (if available) and consultation with the Purchasing Department to determine delivered or installed costs
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\$10,001-\$20,000	Documented written quotes from at least three separate vendors (if available) and consultation with the Purchasing Department and appropriate Committee of the Legislature, (to include State Contract Purchases) to determine delivered or installed costs
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Over \$20,000	Sealed bids in conformance with the General Municipal Law.
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Public Works Contracts less than \$35,000:

\$1 - \$2,000	At the discretion of Purchasing Department
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\$2,001 - \$10,000	Documented verbal quotes from at least three separate sources (if available) and consultation with the Purchasing Department.
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\$10,001 - \$35,000	Documented written quotes from at least three separate sources and consultation with the Committee of the Legislature involved.
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Over \$35,000	Sealed bids in conformance with the General Municipal Law.
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Purchase Contracts are contracts for the purchases of services, supplies, commodities or equipment.

Public Works are defined as labor or construction costs and building service contracts. Construction and labor contracts and building service contracts in excess of \$1,500 are also subject to **NYS Prevailing Wage**.

The above policies apply also to the Highway Department except that the requirement to consult with the Purchasing Department applies only to purchases requiring the specific authorization of the Legislature.

COMPETITIVE BIDDING

All contracts for Public Works involving an expenditure of more than Thirty-five Thousand Dollars (\$35,000.00) and all purchase contracts involving an expenditure of more than Twenty Thousand Dollars (\$20,000.00), unless excepted by statute or an appropriate resolution of this Legislature, are subject to competitive bidding and shall be awarded to the lowest responsible bidder as provided by Article 5-A of the General Municipal Law.

Exceptions to Competitive Bidding:

Emergency Purchases – to qualify as an emergency the purchase must meet one of the following criteria:

- The purchase must arise from an accident or unforeseen circumstance
- The purchase must affect life, health or safety issues
- The purchase must require immediate action and justification must be provided as to why the bidding process cannot be followed.
- Emergency purchases must be approved by the Department Head, County Administrator or Purchasing/Deputy Purchasing Agent and all documentation must be submitted as soon as possible.

Surplus or Second Hand Equipment Purchases – may be purchased without a competitive bid if purchased from the Federal or State Government or any political subdivision within New York State. Purchases from private sources do not qualify.

Professional Services – Professional Services are considered to be:

- Services requiring specialized skills, licensing, training or expertise
- Services requiring professional judgement or discretion
- Services requiring a high level of creativity
- When contracts for Professional Services will be more than \$10,000 a Request for Proposals should be developed between the department head and the purchasing department to solicit the vendor with the most cost effective services.
- Contracts for Professional Services

III. AWARDING PURCHASES

- A. Proper documentation is required when the quote is not awarded to the vendor giving the lowest price. Quotes will be awarded to the lowest responsible and responsive vendor providing the goods are of equal values.
- B. Use of alternative purchasing methods including NYS Contracts, Contracts of other New York State Municipalities, "Piggybacking" on other governmental contracts, federal contracts, cooperative purchasing, preferred source, sole source and emergency purchases shall be governed by the provisions of New York State General Municipal Law, Sections 103, 104 or 104-B or State Finance Law, Section 162 or other applicable provisions of law and properly documented.
- C. Best Value: The specific non-price criteria to be used for Best Value purchases must be detailed in the price solicitation and the analysis of the resulting quotes or bids using the specified criteria must be documented. The documentation should include cost benefit analysis where possible. Award for purchases can then be made to the bidder deemed to be the Best Value to the County with all of the aspects of the Purchasing Policy remaining the same, as per Herkimer County Local Law.

- IV. A. All purchases of goods or services (except transcription services, utilities, unscheduled repairs and otherwise authorized services) require a purchase order. Contracts up to \$10,000 may be signed by the department head provided all other purchasing policies, laws and resolutions of the Legislature are complied with and documented. All such contracts must be reviewed by Purchasing Department for compliance with Purchasing Policy prior to signing.

V. PROFESSIONAL SERVICES PROCUREMENT POLICY

Purchases of professional services, which are not required to be bid by State law, shall be governed by the following principles and practices:

- A. Contracts shall be executed for professional services, when appropriate, to delineate the services to be rendered and the method and amount of payment.
- B. Staff who seek approval to purchase professional services must seek to generate proposals to perform these services that are as appropriate to the County's needs and as cost-competitive as possible, by use of RFP's or RFQ's, etc. RFQ's may be used prior to RFP's or independently.
- C. The process to be followed in each new or renewal contract for professional services shall be proposed by the departmental staff person responsible for the services to the appropriate committee of the Legislature. The Purchasing Department must be copied (except for Highway fund requests) prior to consideration and approval by the appropriate Committee. The hiring of those professionals may be authorized by the appropriate committee up to \$10,000. The full Legislature must approve professional services over \$10,000 annually or if
(Attachment 2 to Policy FA 02-19A, Cont'd.)

additional funds must be appropriated (such as with grants).

- D. Where alternative quotes or proposals are obtained, awards to an entity other than the lowest proposer must be properly documented with the rationale/reason for rejection of the lowest price.
- E. For certain types of procurements of professional services, the solicitation of alternative proposals or quotations would not be in the best interest of the County, for example, highly specialized services for which the number of qualified and available professionals is limited. In those instances, the hiring of those professionals may be authorized by the appropriate committee up to \$10,000 annually. The full Legislature must approve the contract if over \$10,000 annually without alternative quotes or RFP's after presentation to the committee of the justification for such a determination with the appropriate documentation.
- F. Any and all procedures not specifically addressed in this policy shall be governed by Section 103 or 104-b of the General Municipal Law.

VI. Any purchases of goods or services from an employee of Herkimer County or an immediate family member must be approved by the appropriate committees of the Legislature in addition to all other requirements.

VII. The following employees are authorized to make general purchases for Herkimer County

(The list must be updated bi-annually):

S. Ferdula, Budget Officer/Purchasing Agent

P. Lumia, Deputy Purchasing Agent

M. Nagele, County Highway Superintendent

S. Tyoe, Deputy County Highway Superintendent

K. Enea, Treasurer (credit card only)

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PROCUREMENT REQUIREMENTS FOR FEDERAL AWARDS

All purchases from new federal awards and incremental funding to existing awards must comply with Uniform Guidance requirements outlined in Title 2 of the Code of Federal Regulations, Subtitle A, Chapter II, Part 200. The following procedures will be incorporated and in addition to the Herkimer County Purchasing Policy.

STANDARDS OF CONDUCT

- No employee, officer, or agent will participate in the selection, award, or administration of a contract supported by federal monies if he or she or any member of his or her immediate family is employed or about to be employed, or a partner, officer or agent in the contracting organization or has a financial or other interest in or will receive a tangible personal benefit from a firm considered for the contract.
- Officers, employees and agents must neither solicit nor accept gratuities, favors or any item of monetary value from contractors or parties to subcontracts.

PRE - PROCUREMENT PROCEDURES

- Measures must be taken to avoid any duplicate or unnecessary purchases of services, equipment or supplies.
- Look for opportunities to consolidate or split up purchases to save money or time and document your findings.
- Weigh the options of leasing and purchasing to discover which is more economical.
- Utilize State and Federal contracts to obtain the best aggregate pricing.
- Investigate State and Federal surplus auctions.

COMPETITION

- Procurements must be conducted in a manner providing full and open competition.
- In order to eliminate unfair competitive advantages the following restrictive practices are prohibited:
 - Placing unreasonable requirements on firms in order for them to qualify to do business
 - Requiring unnecessary experience and excessive bonding
 - Noncompetitive pricing practices between firms or between affiliated companies
 - Noncompetitive contracts to consultants that are on retainer contracts
 - Organizational conflicts of interest
 - Specifying a "brand name" product instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement
 - Any arbitrary action in the process.

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PROCUREMENT METHODS

- Purchases up to \$3,000 (Micro Purchases)
 - The purchase of supplies or services where the aggregate amount does not exceed \$3,000 should follow normal Herkimer County Purchasing Policy procedures.
- Purchases between \$3,000 and \$150,000 (Small Purchases)
 - Procedure should be based on existing Herkimer County Purchasing Policy procedures.
- Purchases over \$150,000
 - Sealed bids
 - Complete, adequate, realistic specifications
 - Two or more bidders must be willing and able to compete for the business
 - The procurement must lead to a firm fixed price contract and selection must be based on price.
 - Competitive Proposals
 - Used when conditions are not appropriate for sealed bids
 - Requests for proposals must be publicized and identify evaluation factors and their importance.
 - Must be solicited from an adequate number of sources
 - Must have a written method for technical evaluations and selection
 - To be used for qualifications based procurement of architectural/engineering professional services
 - Non-Competitive Proposals
 - Proposal from only one source
 - The item or service is only available from one source
 - An emergency for the requirement will not permit a delay resulting from competitive solicitation
 - After solicitation from a number of sources, competition is determined inadequate.

SMALL, MINORITY AND WOMENS BUSINESS ENTERPRISES OR LABOR SURPLUS FIRM

- Affirmative action steps must be taken to assure that minority and women owned enterprises and labor surplus area firms are used whenever possible.
 - Place small and minority businesses and women owned businesses on solicitation lists
 - Assure small and minority businesses and women owned businesses are solicited when they are potential bidders.
 - Divide contract requirements into smaller tasks or quantities to permit maximum participation
 - Establish delivery schedules that encourage small and minority businesses and women owned businesses
 - Utilize the Small Business Administration and the Minority Business Development Agency and the Department of Commerce
 - Require prime contractors to take affirmative steps when dealing with subcontractors.

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RECOVERED MATERIALS

- Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, requires Political Subdivisions to procure only items designated in the guidelines of the Environmental Protection Agency at 40 CFR part 247. Items exceeding \$10,000 in purchase price or value, must contain the highest percentage of recovered materials consistent with maintaining a satisfactory level of competition

CONTRACTS COST AND PRICE

- Every procurement in excess of the Simplified Acquisition Threshold (\$150,000) must have a cost or price analysis including modifications to existing contracts. An estimate should be created before proposals are solicited.
- Profit must be negotiated as a separate element of the price for contracts in which there is no price competition and in every case where cost analysis is performed
- Costs or prices based on estimations are only allowable to the extent that costs incurred or cost estimates included in negotiated prices are allowable if the County has requested prior approval which should include the timeframe or scope of the agreement and be submitted not less than 30 days before the requested action is set to occur.
- Adjustments to the indirect cost rates resulting from a determination of unallowable costs being included in the rate proposal may result in the reissuance of the negotiated rate agreement.
- Financial records, supporting documents, statistical records and all other records pertaining to the award must be retained for a period of three years from the date of submission of the final expenditure report, or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as reported to the Federal awarding agency or pass through entity in the case of a sub recipient. The following exceptions apply:
 - If a litigation, claim or audit is started or filed in the three year period, records must be kept until it has been resolved
 - When notified by the Federal Agency to extend the retention
 - Records for real property and equipment must be retained for 3 years after disposal
 - If records are transferred to or maintained by the Federal awarding agency or pass through entity
 - Program income transactions after the period of performance must be retained starting from the end of the County's fiscal year in which the program income is earned.
 - Negotiated indirect cost rate proposals, cost allocations plans and similar reports must be retained for the 3 year period from the date of submission
 - Non negotiated reports must be retained for 3 years from the end of the fiscal year covered by the plan.

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FEDERAL AWARDING AGENCY OR PASS THROUGH ENTITY REVIEW

- The County must make available upon request the technical specifications on proposed procurements where the Federal awarding agency or pass-through believes such a review is needed to ensure the item or service is the one being proposed.
- The County must make available pre procurement documents when:
 - Procurement procedures or operations fail to comply with standards
 - The procurement exceeds the Simplified Acquisition Threshold and is to be awarded without competition
 - The procurement specifies a "brand name"
 - The contract is to be awarded to any other than the low bidder
 - A modification changes the scope of a contract or increases the amount by more than the Simplified Acquisition Threshold
- The County may request a review to ensure compliance with the standard.
- The County may "self-certify" its procurement system, however, such certification must not limit the Federal agency's right to survey the system.

BONDING REQUIREMENTS

- The County bonding policy for construction or facility improvement contracts or sub contracts exceeding the Simplified Acquisition Threshold may be accepted by the Federal awarding agency if they make the determination that the Federal interests are protected.
- Bids must contain a bid bond, certified check or other negotiable instrument equivalent to 5% of the bid as a guarantee
- Performance bonds covering 100% of the contract must be issues in the event the contractor defaults.
- Payment bonds covering 100% of the contract to ensure payment of all persons supplying labor and materials.

REQUIREMENTS FOR PASS THROUGH ENTITIES

- The County may receive concurrent Federal awards as a recipient, a sub recipient and a contractor depending on its agreements with the Federal Agency and pass through entity. A determination must be made on a case by case basis whether agreements made for distribution of program funds cast the party receiving the funds in the role of a sub recipient or a contractor.
 - Sub recipients - the County must identify:
 - Name
 - Entity identifier (EIN)
 - Federal Award Identification Number
 - Period of performance
 - Amount of Federal Funds Obligated to the sub recipient
 - Total amount of Federal funds obligated to the sub recipient including the current award
 - Federal award project description
 - Name of the Federal awarding agency, pass through entity and contact information of awarding official of the pass through entity.

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- The dollar amount of each Federal award and the CFDA number at the time of Disbursement
 - Whether the award is R & D and indirect cost
 - All requirements imposed by the County on the sub recipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the award.
 - Any additional requirements to meet the County's own responsibility to the Federal Agency
 - An approved federally recognized indirect cost rate negotiated between the sub recipient and the Federal Government, or if no rate exists, the rate negotiated between the County and the sub recipient
 - A requirement that the sub recipient permit the County and auditors to have access to the sub recipients records and financials as necessary
 - Appropriate terms and conditions concerning closeouts.
- The County must evaluate each sub recipient's risk of noncompliance for the purpose of determining the appropriate monitoring which may include factors such as:
 - Prior experience with same or similar sub awards
 - Previous audit results
 - Changes in personnel or systems
 - Results of the Federal Award agency monitoring – if sub recipient receives other awards
 - The County should consider imposing specific conditions upon the sub recipient if appropriate
 - The County should monitor the activities of the sub recipient to ensure the sub award is used for the intended purpose and goals are achieved by:
 - Monitoring financial statements and performance reports
 - Follow up on deficiencies notes through audits, review and other means.
 - Issue a Management Decision for findings pertaining to the award
 - The following monitoring tools may be helpful to ensure proper accountability and compliance:
 - Providing sub recipients with training and technical assistance on program related matters
 - Performing on site reviews of the sub recipients program operations
 - Arranging for agreed upon procedure engagements
 - The County should verify that every sub recipient is audited as required by Subpart F – Audit requirements set forth in 200.501
 - The County should consider whether or not the sub recipients audit results, on site reviews or other monitoring indicate conditions that necessitate adjustments to the County's own records.
 - Take enforcement action against non-compliant sub recipients as described in 200.338.

CONTRACT PROVISIONS

- The County contracts must contain the applicable provisions described in Appendix II to Part 200, Contract Provisions for Non-Federal Entity Contracts (attached).