

TOWN OF BETHLEHEM PURCHASING DIVISION POLICY AND PROCEDURES

SECTION I - INTRODUCTION

It is the intent of this manual to explain to users what the Purchasing Division does and to provide users with information that will enable them to make the most effective use of the services offered by the Purchasing Division. It is suggested that you read this document closely, ask any questions that you feel necessary to increase your understanding of the purchasing process, and refer to it as frequently as you need to in the course of carrying out your daily responsibilities.

This document will be available to managers and vendors on the Town's website and all new managers will receive instruction from the Comptroller's office on its requirements.

A. **MISSION:**

- A. The Purchasing Division shall promote the Town's best interest by providing a professional purchasing system of quality and integrity whereby all persons involved in public purchasing are treated fairly and equitably, the value of public funds are maximized and a sufficient supply system is available for all departments/agencies.
- B. The Purchasing Division will implement and maintain the purchasing system in full accordance with requirements set forth in General Municipal Law of the State of New York and such local policies as passed by the Town Board of the Town of Bethlehem. The Purchasing Division shall conduct the procurement system for the Town in a cost effective, objective manner, devoid of favoritism or special interest influence.

B. **GOALS:**

- A. The goal of the Purchasing Division is to make the purchasing process as competitive and objective as possible, while striving to promote high standards for all business relationships.

C. **OBJECTIVES:**

- A. The objectives of the Purchasing Division are to obtain, on a timely basis, quality products and services as economically as possible, as well as to satisfy the specific needs of our various departments. We endeavor to assure that the taxpayers receive the maximum value for each dollar expended. The established purchasing objectives center on the need for efficient and effective operations which are responsive to users' needs, and practices which promote

sound purchasing management and render the greatest value for the Town's taxpayer's dollars.

D. PURCHASING DIVISION'S RESPONSIBILITIES:

- A. The responsibility of the Purchasing Division is to provide efficient service to the departments in the procurement of goods and services that are of the best value from responsible vendors. Review department recommendations of commodities bids. Review department recommendations of service bids/Request for Proposals (RFP) for conformity with purchasing policy.

E. DEPARTMENT RESPONSIBILITIES:

- A. Expenditures should be planned sufficiently in advance to allow the Purchasing Division to review for best price and/or overall service.
- B. Purchase orders are based on information and specifications shown on the requisition. Care should be taken so that specifications are adequate to allow someone with little or no knowledge of the merchandise to place the order properly. When requesting parts for machines or equipment, a manufacturer and part number or model number of the unit the parts are for should be stated on the requisition.
- C. Employees who are involved in their department's procurement process are to familiarize themselves with all policies and procedures. Supervisors are to ensure that new employees have read these policies.
- D. No purchase shall be divided for the purpose of bringing the value of the order down to avoid using more stringent purchasing methods or restrictions.
- E. It is also important that all employees involved in the procurement process maintain high ethical standards of conduct and avoid situations where there is even the appearance of impropriety.

SECTION II - PURCHASING PROCEDURES

A. GENERAL:

- i. Only the Town's Comptroller or Deputy Comptroller may commit the Town for a purchase. No purchase may be made without a purchase order signed by the Comptroller or Deputy Comptroller or a purchasing card may be used as outlined in Section X.
- ii. The dollar amount of the purchase and/or the commodity/service being acquired is the basis for determining the correct purchasing procedure. This dollar amount is determined on a Town wide basis, not on a departmental basis. The use of commodity codes has enabled the Purchasing Division to easily identify those commodities that require public bids.

- iii. The Purchasing Division has the right to make alternative suggestions to the requisitioner if, in the judgment of the Purchasing Division, the specifications would restrict competition, or otherwise preclude the most economical purchase of the required items.
- iv. Departments should plan purchases sufficiently in advance to allow for best price and/or overall service to be obtained.

B. REQUISITIONS

- i. The Purchasing Division receives requests for supplies, services and equipment from the departments through the Purchasing/Inventory (PI) financial system. The Department Head or his/her designee reviews each requisition for its completion and determines the correct purchasing procedures for that order. Requisitions with incomplete product descriptions are rejected back to the requestor, until enough information is given to properly identify the product being requested.
- ii. **A completed requisition form in PI will include the following:**
 - Department name
 - Date requisition is initiated
 - Catalog number & manufacturer
 - Detailed description of items(s) requested
 - Date required
 - Unit measure (each or pack)
 - Quantity required
 - Account to be charged
 - Special instructions
 - Suggested vendors
 - Commodity Codes as required

C. THE PURCHASE ORDER:

- i. Requisitioned Request:
- ii. Department Head Approval
 - a. Fleet Manager (Vehicles and Equipment)
 - b. MIS Manager (Computer and Software)
- iii. Comptroller or Deputy Comptroller Approval (Financial and Purchasing Procedure Review)
 - a. The Purchasing Division may require Town Supervisor approval under some conditions.
 - b. The Purchasing Division will not issue a purchase order for goods or services that have been purchased without prior approval from the Purchasing Division.
 - c. Emergency purchase order requests must be kept to a minimum and must be for essential items when the normal delay in processing will significantly affect the operation of the department. Routine items, which the department has forgotten to maintain in inventory or anticipate a requirement, will not meet the guidelines.

- d. The Purchasing Division will require the following information before processing an emergency purchase order request:
- What is needed?
 - Why is the item needed immediately?
 - Who is the suggested vendor?
 - What is the lead time for delivery from the suggested vendor?
- e. After securing the above information, the Purchasing Division will approve or disapprove the request. If approved, the Purchasing Division will convert the requisition to a purchase order and the department may then order the goods or services.

SECTION III - THE BID PROCESS

Competitive bidding is required for purchase of commodities or like commodities regardless of funding source with an anticipated value of \$20,000 or more. (Exceptions to bidding see Section XII) The competitive bidding process ensures that all bidders receive the same information and the bid award shall be made to the lowest responsible bidder.

Planning and gathering information is vital. Sufficient lead time should be built into the procurement process to permit adequate planning, specification writing, bidding, vendor selections, documentation, etc. Departments should allow sufficient time for the Purchasing Division to review bids, product specifications or scopes of work. Additional time will be needed for bids and RFPs where contracts must be approved by the Supervisor or the Town Board. A request in writing to advertise for a Bid must be made to the Purchasing Division prior to the placing of any legal notices. The minimum time allowed in New York State between the advertising date and the bid opening date is five (5) days, however longer periods may be required depending on the complexity of the project or item being specified.

- Advertisements for public Bids and Requests for Professional Services are published in the designated official Town newspapers, *The Spotlight* or *The Times Union*.

All Bids and RFPs are posted on the Empire State Purchasing Group (ESPG) website for viewing and downloading.

The Town Clerk or effecting department issues bid or proposal packages to vendors/contractors at the advertised location or by down loading from the ESPG website. Bid or proposal packages are also mailed First Class, or Federal Expressed when the firm furnishes a Federal Express account number. The request for bid or proposal package must come in writing, e-mail or by fax.

All bid or proposal packages picked up at the Town Clerk's Office are recorded on the bidders specification pick up form. The ESPG website maintains a record of all firms who download from the website.

A. DEVELOPING BID SPECIFICATIONS:

- i. The department writes a bid using a list of specifications as the specific criteria against which vendors' bids are evaluated. These specifications must be absolutely clear to all the potential bidders. The bid will be awarded to the lowest cost supplier to meet all of the department's needs, exactly as it was defined by the department in the specifications.
- ii. Departments will not be allowed to add or delete requirements after the bids open; the evaluation will be based solely on all requirements set forth in the bid. During the bid process, the vendors must be absolutely certain they are all considering the same thing. The vendor needs to offer the appropriate product at the right price.
- iii. The goal is to have only one possible meaning for the specifications you have listed. Vendors often challenge specs and they want reassurance they're being treated impartially. Departments may be called upon to justify any requirement as the minimum acceptable to meet their legitimate operational needs. Conflict can be avoided by developing a clear, unambiguous specification.
- iv. A good specification should do four things:
 - Identify minimum requirements;
 - Allow for competition;
 - List reproducible test methods to be used in testing for compliance with specifications; and
 - Provide for an equitable award at the lowest possible cost.

a. Brand Names

i. Brand names can be used in a specification, however, a bid will generally specify, "brand name or equal" on the bid or RFQ. A brand name gives the parties involved an idea of what type and quality of product you require. And in many cases, several distributors can supply a given brand. You still must address your most important features or requirements. Since no two brands are identical in all respects, describe in which respects you need any product offered to be equivalent. Make it clear at the outset what you consider an "equivalent" to be.

b. Use of Vendor Specifications

i. Only departments are qualified to know exactly what their needs are. Avoid turning the job over to a vendor. Vendors' literature is written to describe and promote their products. It is their job to sell their company's product and it is to their benefit to emphasize the uniqueness of their product both verbally and in their product literature.

ii. By copying a vendors' literature rather than writing their own specifications, departments are likely to over-restrict the specifications to the point, where only the vendor whose literature has been copied can meet them. It may reduce competition and result in higher costs.

B. NON-APPROPRIATION CLAUSE:

- i. Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated

and budgeted by or are otherwise unavailable to the Town for payment under an Agreement. The Town will immediately notify the Contractor of such occurrence and the Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the Town of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted

C. BIDDERS LIST:

- i. In addition to the required public advertisement, the Town posts its bids/RFPs on the ESPG website. Any vendor wishing to have automatic notification must register on the ESPG website and pay a small fee for that service. Vendors who do not wish to have automatic notification may register for free and then they will have access to downloading any document. Vendors who register for free have the responsibility of checking our website to look for business opportunities. The Town will no longer maintain lists of vendors for commodities or services. In order for specifications to be sent to any vendor, that vendor must first contact the issuing department by mail, e-mail or fax, requesting that they be sent via regular mail. Any vendor that requests specifications to be sent by Federal Express or other overnight mail must pay for this service. No bid or proposal packages will be "faxed" to any vendor under any circumstances.

D. BID SECURITY:

- i. There are two different types of circumstances that may require bid securities.
 - a. **PURCHASE OR SERVICE** - A percentage of the estimated bid as security is required in certified check form and/or bid bond. The certified check and/or bid bond of the awarded vendor is held until the Town Clerk receives written notification from the requesting department head that bid items have been received. The bid security is then returned to the awarded vendor.
 - b. **CAPITAL IMPROVEMENT** or **PUBLIC WORKS PROJECTS** - A percentage or fixed dollar amount bid security in the form of a certified check or bid bond is required. Bid security will be five percent of the total bidding contract amount or a fixed dollar amount. Bid security will be returned once the required performance bonds have been received and the contracts are fully executed by the Town Supervisor.

E. PERFORMANCE BOND:

- i. Performance bonds shall be required when bidding capital improvement or public works projects. Bidders are required to submit their performance bonds before or at the time that they sign a contract. This bond will ensure that the bidder performs for the municipality between the date of award and the date of completion of the contract.

F. PREVAILING WAGES:

- i. Prevailing wages consist of pay scales that have been bargained for by the various unions throughout the State and are set by the New York State Department of Labor. Vendors must pay these rates to those employees who work on public

works projects or in any municipal building. There is no dollar threshold where these wages do not apply. In having vendors submit quotes, it is extremely important to make sure that they understand that prevailing wages apply for any public works project for the Town, regardless of the cost of the contract.

G. ADDENDUMS:

- i. Only formal, written addenda can alter the bid specifications. When a discrepancy, ambiguity, or omission is revealed, the Town will issue an addendum to clarify the bid requirements. The addendum is sent by fax and/or mail to all vendors that have picked up or were mailed bid packages and posted on the ESPG website. The first addendum will be labeled "Addendum #1". Subsequent addendums issued will be sequentially labeled.
- ii. The Town will make every effort to ensure that the appropriate vendors receive addenda.
- iii. The addendum procedure will also be used to extend the bid date if necessary, to give the vendors/contractors sufficient time to submit a responsible bid.

H. RECEIPT OF BIDS:

- i. Vendors or contractors must mail, express, or deliver sealed bids to the Town Clerk's office on or before the bid deadline specified in the legal advertisement. As the bids are received, they are immediately date and time stamped by the designated time clock, and bid receipt is recorded in the Town Clerk Bid/Proposal Log. No bids are accepted after the bid deadline. Those received after the bid deadline will be returned to the sender unopened. No "fax" machine transmission bids will be accepted under any circumstances. All bids are kept in a secure location.
- ii. At the appointed time, the Town Clerk, or designee, will announce the bids to be opened. The bids will be opened and read aloud, and the bid prices appropriately recorded.

I. BID RECOMMENDATION PROCESS:

- i. A copy of all bids received are made and sent to the requesting department with a memo requesting a review and a recommendation or rejection of the lowest responsible bidder. The department shall review the package and send a memo of their recommendation or rejection to the Town Board with a copy to the Purchasing Division. If the lowest responsible bidder is not recommended, then a detailed written explanation from the department head must be attached. The Purchasing Division will review the package and department recommendation, and, if necessary, contact the Town Attorney to clear up any legal technicalities and will approve or disapprove the department's recommendation.

J. BID AWARD PROCESS:

- i. The department head must submit the bid package with recommendations to the Town Board for approval. After the approval for the contract is granted, the

Town Clerk will then process any necessary notice of award and the Purchasing Division will process a purchase order. When the award process is finalized, the entire bid package becomes a permanent file in the Town Clerk's Office.

K. PURCHASE OF LIKE COMMODITIES UNDER \$20,000:

- i. Purchases should be evaluated to determine whether, over the course of the fiscal year, the Town of Bethlehem will spend in excess of the competitive bidding thresholds within each department for the same or similar items or services. Prior year's budgetary appropriations should be referred to for this information and compared with current projections.
- ii. Documentation of actions taken in connection with each such method of procurement is required as follows:
 - a. Attached to the purchase documents (i.e. invoices, voucher, bill, etc.) shall be a notation of any verbal or written quotes, any requests for proposal (RFP/RFQ) responses, contracts, or other documentation of the non-bid procurement process.
- iii. Where competitive bidding is not required by General Municipal Law 103, the Town Board has adopted the following conditions under which, and the manner in which, procurements of commodities shall be made:

iv. PURCHASES OF COMMODITIES, EQUIPMENT OR GOODS:

a.	\$0.00 - \$1,999.99	Awarded at the discretion of the Department Head, with the approval of the Purchasing Division.
b.	\$2,000 - \$4,999.99	Minimum of three documented telephone quotes, with award recommendation being made by the department head, and with the approval of the Purchasing Division.
c.	\$5,000 - \$19,999.99	Minimum of three vendor submitted written, e-mail or facsimile price quotes, with award recommendation being made by the department head, and with the approval of the Purchasing Division.
d.	\$20,000.00 - above	Sealed bids in conformance with General Municipal Law, Section 103.

L. PUBLIC WORKS PROJECTS UNDER \$35,000:

- i. Where competitive bidding is not required by General Municipal Law 103, the Town Board has adopted the following conditions under which, and the manner in which, public works project procurements shall be made:

ii. **PURCHASES FOR PUBLIC WORKS PROJECTS/CONTRACTS:**

a.	\$0.00 - \$1,999.99	Awarded at the discretion of the Department Head, with the approval of the Purchasing Department
b.	\$2,000 - \$4,999.99	Minimum of three documented telephone quotes, with award recommendation being made by the department head, and with the approval of the Purchasing Division
c.	\$5,000 - \$34,999.99	Minimum of three vendor submitted written, e-mail or facsimile price quotes, with award recommendation being made by the department head, and with the approval of the Purchasing Division..
d.	\$35,000.00 - above	Sealed bids in conformance with General Municipal Law, Section 103

M. **PROCURING PROFESSIONAL SERVICES:**

- i. The Town Board has adopted the following policy under which, and the manner in which, procurements of professional services shall be made:
 - a. As a matter of good practice, Requests for Proposals (RFP's) should be done in order to hire the most qualified service provider, at the most reasonable price. Annual RFP's are not required; however, they must be done for any initial contracts exceeding \$20,000. Note that the \$20,000 limit is an annual limit, but the threshold for a professional engagement for a specific type of service or project, which may span multiple fiscal years is \$35,000.
 - b. Engagements for under \$20,000 do not require an RFP; however, it is expected that departments will exercise due diligence to make sure that a competent professional is chosen, at a reasonable fee. If there is a possibility that the scope of services might ultimately exceed \$20,000 annually due to multiple phases of work or due to certain contingencies, departments should consider preparation of an RFP. Where we have a combination of goods and services the two need to be reviewed separately to determine if board approval is necessary in a proposal. If a payment request is made for services in excess of \$20,000, and an RFP was not solicited, Town Board approval will be required prior to payment by the Comptroller's Office.

- ii. Creation of the RFP:

- a. Certain projects may require interdepartmental collaboration, and should be managed on a joint basis as deemed necessary.

NOTE: A Request for Qualifications (RFQ) may be appropriate if it is deemed desirable to narrow the scope of the actual RFP review to professionals who have been designated as eligible to submit an RFP, based on an assessment of their expertise. The focus of an RFQ is solely on a professional's realm of relevant experience, where the Town sets forth the minimum standards we require. An RFQ does not solicit a proposal on the specific project at hand. Once the professionals have been deemed qualified, then they can respond to the Town's detailed RFP. Please see the Purchasing Division if you are considering this.

- b. The department initiating the RFP must provide a draft copy of the RFP to the Purchasing Division, for review and approval prior to issuance. The review will be completed within ten (10) business days. The purpose of this review is to achieve uniformity in format, and standardization in certain contractual language.
- c. The department issuing the RFP generally performs the review of responses, and makes the recommendation for appointment.

iii. Who is Authorized to Hire the Professional?

- a. Annual Services Less than or Equal to \$20,000 for specifically budgeted services: Town Supervisor
- b. Annual Services Greater than \$20,000 for specifically budgeted services, and for non-budgeted services, which also required a budget modification: Town Board
- c. Professional services funded by the project developer only require the approval of the Town Supervisor if project funding is held in a Town controlled designated account. If any costs are to be committed by the Town, either implicitly or explicitly, then approvals are required by thresholds set in iii. A and B.
 - i. The Town Supervisor, regardless of the approval level, must sign all contracts. A purchase order must be issued upon the contract signing. (NOTE: an "inverted" purchase order is typically used for professional services)

iv. Duration of the Selection Based upon the RFP Process:

- a. Once a professional has been selected, their services may be utilized within five years of the appointment, assuming their work is within the scope of the initial RFP, and their prices are within a reasonable range (allowing for modest price escalations). RFP's must be reissued every five years, at a minimum, in order to ensure that the goals of a most qualified/reasonably priced professional is engaged. Note that the contract term would generally be for a one-year period – the policy merely allows the initial RFP to be valid as a means of selection for a five-year period.

v. What if the Approved Professional is Unable to Provide Services?

- a. In the event a professional appointed in accordance with this policy is unable to provide the services, or if the Town is not satisfied with the services

- provided, the department may refer back to the most recent RFP file, and contact the second and third choices. Upon updating price information, the department may then recommend the appointment of a new professional by the Town Board, without going through another RFP process.
- b. This new appointment will then start the five-year period in which the professional can serve without conducting a new RFP.
- vi. Exceptions, requiring Town Board approval, regardless of amount:
- a. At the discretion of the department head and Town Supervisor, or as otherwise may be required by statute, purchased services for less than \$20,000 may be referred to the Town Board for approval. The following items require Town Board approval, regardless of amount:
- i. Audit Services. Note that the auditors are subject to annual appointment.
- ii. Legal Services. Exempt from RFP requirements; however, subject to recommendation from the Town Attorney, and ultimate approval by the Town Board.
- iii. Deferred Compensation Plan Administrator. The NYSDCB requires RFP's to be solicited every five years, and the Town Board must make the appointment, in accordance with state regulations.
- vii. Emergency Engagements:
- a. Although likely to be a rare event, there may be an emergency situation in which professional consulting is required immediately in order to protect the public interest. If a department head deems such an emergency to exist, with the written approval of the Town Supervisor, a professional may be engaged. If the scope of the work is anticipated to exceed \$20,000, the facts and circumstances of the emergency necessitating the hiring of the consultant without adherence to the RFP requirement must be submitted to the Town Board, for their ultimate approval, prior to payment by the Comptroller's Office.
- viii. Exceptions to the RFP Requirement:
- a. Certain Proprietary Software: Although initial decisions to purchase proprietary software (licensed and supported by the company who created the software) should conform to the RFP requirement, subsequent purchases of integrated software modules may not be subject to the RFP process, if it is deemed and documented to be contrary to the public interest to deviate from an adopted business platform. All purchases of software must have been budgeted and require the approval of the Director of MIS.
- ix. Insurance:
- ii. The selection of an insurance carrier(s) is reviewed annually, and the Town's account is remarketed at least once every three years. In addition, the selection process is independently reviewed every five years.

Accordingly, these policies meet the established goal of obtaining the best service and product at the best price.

SECTION IV - SOLE SOURCE

Competitive bidding proposals are not required under Section 103 in the General Municipal Law in those limited situations when there is only one possible source from which to procure goods and services required in the public interest such as in the case of certain patented goods or services or public utility services (see, gen, 1986 Opns St Comp No. 86-25, p 41).

In making these determinations, the department head should be prepared to show, among other things, the unique benefits of the patented item as compared to other items available in the marketplace; that no other item provides substantially equivalent or similar benefits; and that, considering the benefits received, the cost of the item is reasonable, when compared to conventional methods. In addition, the department head should be prepared to document, as a matter of fact, that there is no possibility of competition for the procurement of the goods.

The New York State Comptroller's Office, Division of Municipal Affairs, required that any municipal officers executing sole source documents should be prepared to "factually verify that the goods or services sought may only be obtained from a single source." This must be in the form of a letter provided from the company stating that their product or service is unavailable through other vendors.

To initiate a sole source purchase, the requesting department must submit a Sole Source Justification Form, in addition to the letter from the supplier. This form must contain the name and address of the vendor; a complete catalog number, manufacturer and description of all sole source items; and bear the original signature of the department head.

Upon receipt of the fully processed Sole Source Justification Form, the Purchasing Division will verify that the requested item or service is available from only one supplier, in accordance with statutes permitting sole source procurement.

No official or employee shall be interested financially in any contract entered into by the Town. This also precludes acceptance of gratuities, financial or otherwise, by the above persons, from any supplier of materials or services.

SECTION V - PUBLIC WORKS PROJECTS/CONTRACTS

It is important to distinguish between contracts for public works and purchase contracts, as these items are not defined in the General Municipal Law. This

distinction is especially important because there is a \$15,000.00 difference between the bidding thresholds.

In general, purchase contracts involve the acquisition of commodities, materials, supplies or equipment, while contracts for public work involve services, labor or construction. Many times contracts involve both goods and services and it is difficult to determine which bid limit to apply. Each procurement must be reviewed on a case by case basis and determination must be made as to what kind of contract is involved. As a general rule, if the contract involves a substantial amount of services, such that it is the focal point and the acquisition of goods is incidental, it will be considered a contract for public works. Conversely, if services or labor are only minimal or incidental to the acquisition of goods, it is considered a purchase contract.

SECTION VI - SERVICES

A service is considered to be any job where a final cost **CANNOT** be determined before the repair or service is made.

Repairs/services where comparable estimates can be obtained will be issued an inverted purchase order.

SECTION VII - EMERGENCIES

Subdivision (4) of General Municipal Law Section 103 set forth an exception to bidding requirements for emergency situations and provides as follows:

"Notwithstanding the provisions of subdivision one of this section, in the case of a public whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants of a political subdivision or district therein, require immediate action which cannot await competitive bidding, contracts for public work or the purchase of supplies, material or equipment may be let by the appropriate officer, board or agency of a political subdivision or district therein."

Accordingly, there are three basic statutory criteria to be met in order to fall within this exception:

1. The situation must arise out of an accident or unforeseen occurrence or condition;
2. Public buildings, public property or the life, health, safety or property of the political sub-division's residents must be affected;
3. The situation must require immediate action which cannot await competitive bidding. Even when a governing board passes a resolution that a public emergency exists, the public interest dictates that public purchases are made at the lowest possible cost, seeking competition by informal

solicitation of quotes or otherwise, to the extent practicable under the circumstances.

The Office of the State Comptroller has suggested that, to meet these criteria, there generally must be a present, immediate and existing condition which is creating an imminent danger to public or private property or the life, health or safety of the residents and which makes further delay to comply with competitive bidding requirements unwarranted (1981 Opns St Comp, No. 81-224, P 241). Further, in as much as General Municipal Law Section 103(4) provides that the emergency must arise out of an accident or unforeseen occurrence, it is doubtful that a local government may invoke the emergency provisions in a situation which is the result of inaction or dilatory behavior on the part of officials and which, therefore, could have been foreseen (1978 Opns St Comp No. 78-780, unreported; see *Rodin v Director Purchasing*, 38 Misc 2d 362, 238 NYS2d d).

Note that, even in an emergency situation, it is in the public interest that purchases be made at the lowest possible cost (*Orange Paint v Scaramuccia*, 59 AD2d 894, 399 NYS2d 52). Thus, the political subdivision should seek competition by informal solicitation of quotes or otherwise, to the extent practicable under the circumstances.

The law cannot be circumvented by a declaration of an emergency which is caused by lack of planning on the part of a department. A "sudden" emergency arising from the gradual deterioration of a piece of equipment or an out-of-stock condition of a routine supply item, will not withstand the legal scrutiny.

The requesting department should contact the Purchasing Division for the determination that the situation qualifies as an emergency.

When circumstances support an emergency purchase, the requesting department should attempt to locate a source for the goods or services. An attempt should be made to obtain the lowest price from a vendor or contractor who will best meet the requirements. When the supplier and the price have been established, the department head or designee will call the Purchasing Division for emergency purchase procedures.

The Town Board is empowered to designate an "emergency purchase" or "emergency project," and may waive normal bidding requirements. If the emergency designation is approved and certified by the Town Board, the requesting department will submit all original backup information such as the vendors' or contractors' proposed contracts or proposals, quotations, letters, etc. to the Purchasing Division.

SECTION VIII - CANCELLATIONS

Departments will notify the Comptroller's Office of the complete cancellation of a purchase order, so that the encumbrance may be liquidated.

SECTION IX – PAYMENT PROCESS

- i. **GOODS PURCHASED:**
 - a. Purchase Order forms will print in the departments after the requisition has been converted to a purchase order. The claim forms can be processed by the department as soon as the invoice has been received.
- ii. **PUBLIC WORKS PROJECTS:**
 - a. It is the responsibility of the Department Head to have the proper claim form and vendor certifications in order to have payment made.

SECTION X - CONTRACT APPROVALS

A. TOWN SUPERVISOR:

- i. For contract approval, the Town Supervisor is empowered to approve and execute contracts in amounts up to nineteen thousand nine hundred and ninety-nine dollars and ninety-nine cents (\$19,999.99) for budgeted commodities and thirty four thousand nine hundred and ninety-nine dollars and ninety-nine cents (\$34,999.99) for budgeted public works projects. These contracts must involve commodities or projects that have been identified in the adopted current year budget and follow Town Board approved purchasing procedures and New York State GML 103,104. Any new or non-budgeted expenditure must receive Town Board approval, require a budget modification, and Town Board authorization to empower the Town Supervisor to approve and execute the contract(s).
- ii. Project change orders for all departments other than DPW or Highway that do not exceed 5% of original or revised bid, and sole source contracts regardless of the dollar amount, may be approved, in writing, by the Town Supervisor. Any change order exceeding these limits from the original or revised bid requires Town Board approval. DPW and Highway related project change orders that do not exceed 20% of original or revised bid, and sole source contracts regardless of the dollar amount, may be approved, in writing, by the Town Supervisor.

B. TOWN BOARD:

- i. The Town Board must approve contracts for execution by the Town Supervisor in amounts over twenty thousand dollars (\$20,000.00) for commodities, as defined by NYS GML and thirty-five thousand dollars (\$35,000.00) for public works projects, and approved in the Town's annual budget.

C. NON-DESIGNATED BUDGETED APPROPRIATIONS

- ii. All contracts in amounts over twenty thousand dollars (\$20,000.00) for goods or services, regardless of type, not designated in the Town's annual budget must be approved by the Town Board.

D. DESIGNATED BUDGET APPROPRIATIONS

- iii. All designated items or services being purchased, that have been approved in the current year budget, and are of a routine operational need are not subject to Supervisor or Town Board approval. They must however be purchased in accordance with in Town Purchasing procedures and New York State GML 103,104.

E. NON-DELEGATION OF AUTHORITY

- iv. Nothing in this statement of policies and procedures shall be construed as delegating the power and authority of the Town Board, to approve contracts for

any purpose other than the procurement of specific goods and services according the terms of this statement of policies and procedures.

SECTION XI - PROCUREMENT CARDS

The Town of Bethlehem recognizes that the use of Procurement Cards is a practical alternative to the use of purchase orders or petty cash for high-volume, low-value purchases. The purpose of the Procurement Card program shall be to streamline and simplify the requisitioning, purchasing and payment process for small dollar transactions.

Therefore, the Town Purchasing Division is authorized to implement policies and procedures for the use of Procurement Cards for the purchase of goods or services. Such program shall be designed to shorten the approval process and reduce the paperwork or procurement procedures such as purchase orders, petty cash, check requests and expense reimbursements. Notwithstanding this authority, such policies and procedures must include the following provisions:

- i. Each transaction shall be limited to \$2,000 for Department Heads and \$500 for all other cardholders with each card limited to \$15,000.00 per month. This limit may only be exceeded with prior written approval of the Comptroller or his/her designee.
- ii. Procurement Card(s) may not be used for the following:
 - a. Personal purchases of any kind;
 - b. Cash advances;
 - c. Items requiring technical review or subject to external approval (such as approval of computer equipment purchases);
- iii. Each department which requests Procurement Card(s) must provide:
 - a. Written documentation of how each card will be used;
 - b. An estimate of any time and/or monetary savings generated through the use of each Procurement Card(s);
 - c. Written description of the types of transactions that will be made with each Procurement Card(s);
 - d. Identification of the employee who will be authorized to use each Procurement Card and an explanation as to why such employee should be authorized to use a Procurement Card.
 - i. Such materials and information must be provided for each Procurement Card issued to a department.
- iv. The Division of Purchasing shall also develop internal controls for each department to ensure proper use of each Procurement Card(s). These internal controls shall include the following:
 - a. Dollar limits on each transactions;
 - b. Total monthly spending limits;

- c. The number of transactions allowed per specified time period (limit may be daily, weekly or monthly);
- d. Security measures to prevent theft, loss or unauthorized use, including procedures for obtaining, safeguarding and returning cards;
- e. A system that tracks expenditures as they occur. Such system must give up-to-date information on purchases and funds expended.
- f. The types of goods and services that are not authorized for Procurement Card purchases.
 - i. Such materials and information must be provided for each Procurement Card issued to a department.
- v. The issuance of any Procurement Card(s) to a department must be approved by the Department Head and the Purchasing Division.
- vi. Procurement Card(s) must be kept in a secure (locked) location when not in use.
- vii. Only one employee shall be authorized to use each Procurement Card. Such issuance to a specific employee must be approved by the employee's Department Head and the Purchasing Division. Any unauthorized purchases made with a Procurement Card shall be the responsibility of said employee. Said employee must sign an acknowledgment and disclosure form prior to receiving a Procurement Card.
- viii. All Procurement Card purchases must receive prior approval by the employee's Department Head or his or her designee(s).
- ix. Any misuse of the Procurement Card, such as splitting of transactions to avoid purchase limits or payment of sales taxes, or misrepresentation, such as use of card outside of Town business or without knowledge of Department Head, shall require the immediate suspension of all Procurement Card privileges by the individual or relevant department. Any misuse of the Procurement Card or misrepresentation while using a Procurement Card shall be grounds for discipline up to and including termination of employment.
- x. Each employee who is authorized to use a Procurement Card must reconcile their Procurement Card statement and purchases monthly in order to verify that all charges are proper and the correct amounts have been charged. The Comptroller's Office shall determine the dates when such reconciliation statements must be submitted. The employee who is authorized to use a Procurement Card and his/her Department Head or his or her designee shall sign the reconciliation statement to indicate approval and that all charges are proper and the correct amounts have been charged. Such reconciliation **must include receipts** for each use of the Procurement Card and a brief description of the good or service purchased. Original receipts, invoices and credit slips from each purchase must be provided for reconciliation and audits. These documents should be attached to the appropriate monthly statement and retained for review. Upon request, an additional detailed and written explanation must be provided for any use of a Procurement Card.

- xi. It shall be the responsibility of each employee who is authorized to use a Procurement Card to contact the vendor and/or Procurement Card issuer directly regarding any discrepancies between the receipt and statement. The Comptroller's Office must be notified of any discrepancies.
- xii. The Department Head and/or the Purchasing Division may suspend or revoke the privilege of any employee to use a Procurement Card at any time. Further, the Purchasing Division, with just cause, may suspend the privilege of Procurement Card use for any department. For the purposes of this program, the term, "just cause" includes, but is not limited to, failure to comply with procedures, policies and guidelines regarding the use of Procurement Card(s).
- xiii. In addition to the provisions contained herein and those implemented by the Purchasing Division, a Department Head may implement additional rules regarding the use of Procurement Cards. Such additional rules shall not supersede those policies and procedures implemented by the Purchasing Division or contained herein.

SECTION XII - UNAUTHORIZED EXPENDITURES

Any unauthorized expenditures by a department or individual may become the legal and financial responsibility of the department head or individual.

SECTION XIII - EXCEPTIONS

"A good faith effort shall be made to obtain the required number of proposals or Quotations." If a town department is unable to obtain the required number of proposals or quotations, the department shall document the attempt made at obtaining the proposals. In no event shall the inability to obtain the Proposals or quotes be a bar to the procurement.

"Except when directed by the Town Board, no solicitation of written proposals or quotations shall be required under the following circumstances:

- i. Emergencies;
- ii. Sole source situations;
- iii. Goods purchased from Agency for the Blind or Handicapped Industries;
- iv. Goods purchased from Correctional Industries; (Section 162 State Finance Law)
- v. Goods or services purchased from another government agency or public jurisdiction within New York State that provides services to municipal governments; (OGS, County Contracts, General Municipal Law 104)
- vi. Contracts let by any state, county or political subdivision or district therein if such contract was let in such a manner that constitutes competitive bidding consistent with state law and made available for use by other governmental entities.
- vii. Goods purchased from surplus government auction;
- viii. Goods or services purchased for less than \$1,000.00

“It is generally accepted that goods or services purchased under OGS or NYS. County contracts are of a better value due to volume discounts.”

SECTION XIV - PURCHASES FROM OTHER THAN THE LOWEST RESPONSIBLE DOLLAR OFFERER

General Municipal Law Section 104-b, Subdivision 2 paragraph (e) requires that the policies and procedures "require justification and documentation of any contract awarded to other than the lowest responsible dollar offered, setting forth the reasons such an award furthers the purpose of this section."

Any time a purchase is made from other than the lowest responsible vendor or contractor submitting a quotation or proposal, there must be justification and documentation of the reason why the purchase was in the best interest of the Town and otherwise further the purposes of GML Section 104-b.

SECTION XVI - E-PROCUREMENT

The Purchasing Division participates in the ESPG (Empire State Purchasing Group) e-procurement system. This system provides one centralized bidding and registration system for vendors as a single point of contact with broader access to new business opportunities throughout our community. This new system, developed in conjunction with a local company, BidNet, allows the Town and other local municipalities to post invitations to bid, informal quotes, request for proposals, construction notices, addenda and awards all on one centralized system. This type of system saves Town taxpayers money, expands economic opportunities for businesses throughout the Town, reduces time spent acquiring goods, and improves the customer service levels of the Town purchasing function.

Purchasing Division Sole Source Justification

Procurement Policy, Section IV: Sole Source Procurements

A sole source procurement is justified when there is only one good or service that can reasonably meet the need and there is only one vendor who can provide the good or service.

Department _____

Contact Name: _____

Phone #: _____

Requisition #: _____

Describe in detail the products and/or services to be procured:

Detail how this/ these produce(s) meet(s) your needs. Define the unique benefits to the of the item as compared to other products in the marketplace. Show that no other product provides substantially equivalent or similar benefits and that, considering the benefits received, the cost of the item is reasonable in comparison to other products in the marketplace. (Attach a separate page if needed)

Vendor Name: _____

Vendor Address: _____

Phone: _____

Fax: _____

Product Needed by date: _____

Estimated Total Dollars for this procurement: \$ _____

Town of Bethlehem Purchasing Division Sole Source Justification

Attach a detailed explanation of Vendor Sole Source Status, i.e., what is the basis for your identifying this vendor as a sole source? Check any that apply.

- The vendor is the manufacturer of the product and has no distributors.
(Attach manufacturer's letter as documentation.)
- The vendor is the only reseller of the manufacturer's product in this geographic region.
(Attach manufacturer's letter as documentation.)
- Item to be purchased is a supply for equipment which is under warranty, and use of any product other than specified will void the warranty.
(Attach copy of warranty with such requirement highlighted).
- Product is patented.
(Provide patent number and patent documentation.)
- Item is proprietary and is additional product or software which must work with an existing system.
(Provide letter of documentation from system manufacturer.)
- Product has been standardized for use in the Town through the Town Board process.
(Attach copy of Resolution.)
- Other
(Provide a statement on a separate page with detailed documentation.)

Department Head or Designee:

Signature: _____