

# Warren County Board of Supervisors

## RESOLUTION NO. 410 OF 2024

**RESOLUTION INTRODUCED BY SUPERVISORS STROUGH, CONOVER, WILD, DRISCOLL, MADAY, GERACI AND THOMAS**

### **APPROVING REVISIONS TO THE PURCHASING POLICY FOR WARREN COUNTY**

WHEREAS, the Purchasing Agent for Warren County has updated and clarified the Warren County Purchasing Policy and the Legislative, Rules & Governmental Operations Committee has recommended that the same be advanced to the full Board of Supervisors for consideration, and

WHEREAS, the updated and clarified Warren County Purchasing Policy is included with this resolution as Schedule "A," now, therefore, be it

RESOLVED, that the proposed revisions to the Purchasing Policy for Warren County, annexed hereto as Schedule "A," be and the same is hereby adopted as the official policy for Warren County, and be it further

RESOLVED, that any and all prior Purchasing Policies, Resolutions or parts thereof inconsistent with the new Purchasing Policy are hereby repealed, except that the former Purchasing Policy, as amended, shall continue to apply to any purchases made under the former Policy and to those purchases started but not completed under said former Policy.

# **WARREN COUNTY PURCHASING POLICY**

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**SECTION I**

**I. INTRODUCTION**

Goods and services must be procured in a manner so as to assure the prudent and economical use of public monies in the best interest of the taxpayers of the political subdivision or district, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption.

Adopted by the Warren County Board of Supervisors as internal policies and procedures, this Purchasing Policy governs all procurement of goods and services required to be made pursuant to the competitive bidding requirements of General Municipal Law §103 and those goods and services which are not required by law to be procured by political subdivisions or any districts therein pursuant to competitive bidding as per General Municipal Law §104-b.

The County of Warren is hereby authorized to make all purchases of necessary goods and services by any means legal within the State of New York and in compliance with all applicable laws, rules and regulations.

The responsibilities and authority for purchasing are assigned by the governing board to Julie Butler, Purchasing Agent, Jason Shpur, Deputy Purchasing Agent and the Purchasing Assistant. The keynote of any successful purchasing system is cooperation between the employees, Department Heads, staff, Auditor, Treasurer, and the governing board.

## SECTION II

### II. DEFINITIONS

For purposes of this policy please note the following definitions:

**Best Value:** The basis for awarding contracts for services to the bidder which best optimizes quality, cost and efficiency, among responsive and qualified responsible bidders as per New York State Finance Law § 163(1)(j).

**Bid:** An offer or proposal submitted by a bidder to provide a product or service at a stated price for the stated contract term.

**Bid Opening:** The formal process in which sealed bids are opened, in the presence of one or more witnesses, at the time and place specified in the solicitation.

**Change Order:** A change order is as defined as a written order issued by the department covering contingencies, extra work, deductions, increases or decreases and additions, alterations or omissions to the plans or specifications. All funds must be available to pay all costs incurred under this request. Change Orders must be approved by Board of Supervisors before a Purchase Order may be issued.

**Commodities:** Material product, supplies, construction items, electronic information services, or other standard articles of commerce other than technology items as per New York State Finance Law § 160(3).

**Department Head:** Each elected and appointed County officer responsible for the administration of their respective departments, agencies and offices which collectively constitute the structure of the County's governmental operations.

**Emergency:** An urgent and unexpected requirement where health and public safety or the conservation of public resources are at risk. Such situations may create a need for an emergency contract as defined by New York State Finance Law § 163(1)(b). A department's failure to properly plan in advance for an expenditure that results in a situation where normal practices cannot be followed, does not constitute an emergency.

**Emergency Purchasing:** Emergency purchases may be called by any Department Head. Written notification must be given to the Purchasing Department within seventy-two (72) hours of the emergency purchase. Written notification must include an explanation of the emergency purchase and contain an original signature from the individual making the emergency purchase. The emergency purchase and its resulting conditions shall be documented in detail setting forth the nature of the emergency purchasing situation; the potential effect on the health, public safety, or the conservation of public resources; and a detailed description of the commodities, services and technology to be provided. Contracts entered into as a result of the emergency purchasing situation shall be for only the commodities, technology and/or service necessary to remedy or ameliorate the emergency situation. Quoting and bidding requirements are waived for emergency purchases. Requisitions must still be obtained in accordance with the Purchasing Policy within seventy-two (72) hours of the declared emergency.

**Employee Fraud:** An act of fraud is committed if an employee of the County negotiates a personal procurement by the fraudulent use of a County requisition number or purchase order number. Examples of employee fraud include but are not limited to the following:

- An employee claims a purchase is on behalf of the County when in fact the purchase was made solely for personal use AND/OR
- An employee uses his/her County employment to make a personal purchase from NYS Contract
- An employee who commits a fraudulent act with regard to the County Purchasing Policy is subject to disciplinary action and/or legal prosecution.

**Ethics of Purchasing:** Purchasing shall consider the best interest of the County in the betterment of its government, always striving to obtain the greatest value for each dollar expended by the County. All offers

and/or gifts that may in any way influence the procurement process will be discouraged and declined. All qualified responsible bidders will be given equal and fair consideration per Public Officers Law § 74, New York State Finance Law Article 11.

**Federal Purchasing Regulations:** Any County purchases made using State or Federal Funding must follow the requirements of the United States Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Award (2CFR 200).

Any purchase of product and/or services using State or Federal funding require that the County Purchasing Policies and Procedures be adhered to. Additionally, the following additional procedures must be followed:

1. Vendors must be vetted using the U.S. Federal Government's System for Award Management (SAM) before the purchase and/or contract is completed. Vendors must be verified through this system before each purchase to ensure that they are not suspended or debarred from federally funded transactions. If a department is going to make a purchase using Federal funding, they must notify either the Purchasing Department or the County Treasurer and request a vendor check before the purchase is made. All vendors will be required to register on the SAM website.
2. Bonding Requirements for construction or facility improvement contracts or subcontracts exceeding \$150,000 are as follows:
  - a. Bid Bond 5% of the total bid
  - b. Performance Bond 100% of the total bid
  - c. Payment Bond 100% of the total bid.

Requesting Department Heads have the responsibility of ensuring that all of the federal purchasing regulations are followed for the purchase and monitoring of contractor performance as a result of that purchase.

**Invitation for Bid (IFB):** A type of bid document which is most typically used where requirements can be stated and award will be made based on lowest price to the responsive and qualified responsible bidder (i.e. products or commodities).

**Invoice:** A written request for payment that is submitted by a vendor setting forth the date, description, price, and quantity of the product, property, or services delivered or rendered per New York State Finance Law § 179(e)(5). Departments are encouraged to inform their Vendors that invoices may be emailed directly from the Vendor to any authorized staff within the ordering Department. Duplicate invoices must be marked "duplicate" in a plain and legible manner by the vendor as per General Business Law § 93.

**Lowest Price:** The basis for awarding contracts for commodities among responsive and qualified responsible bidders as per New York State Finance Law § 63(1)(I).

**Multiple Awards:** An award of a contract to more than one responsive and qualified responsible bidder who meets the requirements of a specification, where the multiple award is based upon the grounds set forth in the bid document in order to satisfy multiple factors and needs of authorized users. Those factors may include complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, price, compliance with delivery requirements, or other pertinent facts.

**Piggybacking Procurement:** Piggybacking is when you use an existing contract to purchase the same services or commodities at the same price as the contract holder. The New York State Office of General Services has additional information at [ogs.ny.gov](http://ogs.ny.gov). In order to piggyback in purchasing per the requirements of General Municipal Law (GML) §103(16).

In order to piggyback in purchasing, a municipality must meet the requirements of General Municipal Law (GML) §103(16) as follows:

1. **Subject Matter Comparison:** There should be an equivalency between the product or service sought and the original contract which should reflect the County's form, function and utility requirements. Does the existing contract encompass the project or service sought? Did it anticipate the possibility of contract extension? All relevant factors in the proposed extension acquisition (including but not limited to price, quality, and nature of deliverable) should be clearly identified and compared to the original acquisition.
2. **Procurement Method:** The size and scope of the new acquisition should be evaluated in comparison to the original acquisition and its method of award. Does the proposed piggyback significantly

- unbalance the original scope, or change the nature, quantity, scope of the original contract? Could a substantially different procurement response or increased bidder pool involving greater competition reasonably be expected based upon the volume of your proposed request?
3. **Notice to Originating Agency:** The original contracting entity should be contacted and advised of the intended piggyback.
  4. **Consent of Vendor and Terms of Piggyback:** The vendor's consent to the piggyback request must be in written legal form (contract, letter agreement, etc.) separate from a purchase order, which sets forth the agreed terms of the piggyback.
  5. **Absence of Other Acceptable Established Contracting Alternatives:** The following questions apply.
    - Why is piggybacking the appropriate mechanism to use for this procurement (i.e. timing, level playing field, nature of use)?
    - Were other procurement methodologies considered?
    - Are there any special, unusual or exigent market circumstances underlying this extension request?
  6. **Pricing Justification:** Similar to other methods of procurement, the County must document that the price for the proposed acquisitions is reasonable under the circumstances. You should indicate whether pricing concessions have been requested and obtained from the contractor based upon the increased volume of purchases under the piggyback contract.

**Piggyback Contract:** A contract let by any department, agency, office, political subdivision or instrumentality of New York State which is adopted and extended for use by the County in accordance with the requirements of the New York State Finance Law § 163. (e.g. County Contracts).

**Product:** Products are also called commodities. They are articles or substances that may be manufactured or found in nature. Examples of natural products, products made by nature, include hay, grass seed, flowers, sand/salt, etc. Examples of manmade or manufactured products include bullets, paper products, toner, etc.

**Prevailing Wage:** The Labor Law § 220(5)(a) requires public work contractors and subcontractors to pay laborers, workers, or mechanics employed in the performance of a public work contract not less than the prevailing rate of wage and supplements (fringe benefits) in the locality where the work is performed.

**Preferred Source:** In order to advance special social and economic goals, New York State Finance Law §162 requires that a governmental entity purchase select commodities (products) and services from designated organizations when the commodities (products) or services meet the "form, function and utility" requirements of the governmental entity. Under New York State Finance Law §163, purchases of commodities (products) and services from preferred sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State preferred sources as of February 2020 include Corcraft, NYS Preferred Source Program for People Who Are Blind (NYSPSP) and New York State Industries for the Disabled, Inc. (NYSID).

**Professional Services:** Services which require specialized expertise, technical or special skills or training, the exercise of professional judgment or a high degree of creativity in the performance of the contract as defined by the Office of the New York State Comptroller Opinion 2007-1. Professional or technical services shall include but not be limited to the following: services of an attorney; services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public account; investment management services; bonding accountant services; printing services involving extensive writing, editing or art work; management or municipally owned property; or computer software services for customized programs, or technology services involved in substantial modification and customizing of pre-packaged software.

**Public Work:** Projects for construction, reconstruction or maintenance done on behalf of a public entity. Two conditions must be fulfilled in order for the provisions of Labor Law Article 8 to apply to a project: (1) A public entity must be a party to a contract involving the employment of laborers, workers or mechanics; and (2) The contract must concern a public work project. (Outside Labor Law Article 8 are janitorial services, security services, and grounds maintenance.)

**Purchase Order:** A legal contract by and between the County and a Vendor authorizing the vendor to deliver a product or provide services.

**Qualified Responsible:** The financial ability, legal capacity, integrity, qualifications, and past performance of a business entity and as such terms have been interpreted relative to public procurements as per New York State Finance Law §163(1)(c).

**Request for Information (RFI):** Provides a preliminary description of the program objectives and specifications and solicits input from vendors as to the availability of products and services to meet the County's needs.

**Request for Proposal (RFP):** A type of bid document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value."

**Request for Quotation (RFQ):** A type of bid document that can be used when a formal bid opening is not required (e.g., sole source, emergency purchases).

**Requisition:** A written request submitted to Purchasing authorizing a request to purchase commodities or services.

**Responsive:** A bidder meeting the minimum specifications or requirements as prescribed in a solicitation for commodities or services as per New York State Finance Law §163(1)(d).

**Services:** The performance of a task or tasks and may include the use of a material product. This definition includes technology which can be either a product or a service or a combination thereof as per New York State Finance Law §160(7).

**Sole Source:** A procurement where only one bidder is capable of supplying the required product as per New York State Finance Law §163(g).

**Specifications:** The terms and conditions required for product and/or services in the bid documents.

**Standardization:** A commodity (product) that establishes uniform engineering or technical specifications. Standardization to a manufacturer's brand requires Board of Supervisors approval. The use of Standardization does not legally bypass the bidding process.

**Supporting Documentation:** Documents that support a specific Requisition or Invoice.

**True Lease:** Lease of equipment whereby said equipment will be turned into the vendor at the end of the lease term with no option for buy out.

**Voucher:** A document used within the County to authorize payment for product or services.

**Warrant:** A document issued by the County, prepared by the Purchasing Agent, as a guarantee that payments as outlined will be met.

## SECTION III

**II. PURCHASING PROCEDURES****A. Procedures Applicable to all Purchases Regardless of Dollar Amount**

Before making any purchase, the following steps must be taken.

1. Confirm that there isn't already a County bid for the item(s).
2. If there's no County bid, check Preferred Source Offerings in the following order:
  - a. Corcraft  
New York State Department of Correctional Services  
Division of Industries  
550 Broadway, Menands, NY 12204  
Ph: 518-436-6321  
Fax: 518-436-6007  
website: <http://www.corcraft.org>
  - b. NYS Preferred Source Program for People Who are Blind (NYSPSP)  
136 State Street, 2<sup>nd</sup> Floor  
Albany, NY 12207  
Ph: 518-621-0605  
Fax: 518-456-3587  
website: <http://www.nyspsp.org>
  - c. New York State Industries for the Disabled, Inc.  
11 Columbia Circle Drive  
Albany, NY 12203  
Ph: 518-463-9706  
Fax: 518-463-9708  
e-mail: [administrator@nysid.org](mailto:administrator@nysid.org)  
website: <http://www.nysid.org>

Items must meet the form, function and utility of the Department. Catalogs and guidelines may be obtained in the Purchasing Department. If the price from a Preferred Source is within 15% of the lowest quote and meets the specifications of the Department, the item must be purchased from the Preferred Source.

3. If the item/service is not available from a Preferred Source, search the New York State Office of General Services (NYS OGS) website <https://www.ogs.state.ny.us/Purchase/Search/default.asp> for a State Contract. Purchases should be made through available State Contracts (OGS), or under County contract pursuant to Section 408-a of the County Law, and Subd 3 of General Municipal Law (hereinafter "GML") §103 revised in 2013 to allow purchases of materials, equipment or supplies, or to contract for services through any county within the state, whenever such purchases are deemed by the Purchasing Agent to be in the best interest of the County. When contemplating the use of State Contract, you MUST read the contract terms and "How To Use" attachment which will outline whether or not quotes or a mini-bid is required.
4. If no State Contract is available, or you feel the County can obtain better pricing than State Contract, then Purchasing will proceed with a County bid or the Department may obtain quotes, depending on the dollar thresholds (see pages 9-16).
5. The County is also authorized to purchase apparatus, materials, equipment and supplies, and to contract for services related to the installation, maintenance or repair of those items, as authorized by the addition of Subdivision 16 (extended through 2026) as an amendment to GML §103 through the use of contracts let by the United States or any agency thereof, any state or any other political subdivision or district therein. The contract must be let in a manner that constitutes competitive bidding to the lowest responsible bidder, or on the basis of best value, "consistent with state law", meaning in harmony with New York State Law, and made available for use by other governmental entities. Purchases made in accordance with GML §103(16) are not subject to the competitive bidding requirements of GML §103 at the local level as bidding has already been done in accordance

with GML §103 by the lead agency. The stated purpose of GML §103(16) is to reduce costs, and increase efficiencies. The prerequisites that must be met are as follows:

- a. The contract must have been let by the United States or any agency thereof, any state or any other political subdivision or district therein. Therefore, there must be an underlying contract let by one of the listed governmental entities. Contracts developed for use by local governments that are let by private parties (e.g. a private company, association or not-for-profit corporation is the party awarding the contract to the vendor), and not by the United States or any agency thereof, any state or any other political subdivision or district therein, would not fall within the exception.
  - b. The contract must have been made available for use by other governmental entities. This means that the other governmental entity has taken steps to make its contract available for New York local governments by including a clause extending the terms and conditions of the contract to other governmental entities. Unilateral offers by vendors to extend contract pricing and other terms and conditions would not fall within the exception.
  - c. The contract must have been let in a manner that constitutes competitive bidding “consistent with state law”. “State law” refers to New York State’s bidding law applicable to its political subdivisions (GML §103 and related case law). Departments exercising the option to purchase under this exemption will be required to obtain background information on the procedures used to let the contract and, as necessary, consult with counsel, to determine whether this prerequisite is met.
6. As allowed by law (see paragraph 5 above), the County has become a member of several National Cooperatives including: National Joint Powers Alliance (NJPA) now known as Sourcewell; US Communities and National IPA/TCPN now known as Omnia Partners; National Cooperative Purchasing Alliance (NCPA); and Pennsylvania Education Purchasing Program for Microcomputers (PEPPM). The Purchasing Department utilizes these cooperatives on a regular basis in determining the best course of action for particular purchases. Vendors may reference one of these cooperatives in discussions with departmental employees. Purchasing should be consulted to confirm that the company is, in fact, a participating vendor.
  7. Vendor numbers must be requested for each vendor receiving payment from Warren County. All requests for new or changed vendor numbers must be submitted to the Purchasing Department. Vendor numbers are necessary in order to complete a Purchase Order and must contain the following information:
    - a. Correct and full name of the individual/organization
    - b. Remittance address for payment & phone number
    - c. Federal ID or Social Security Number
    - d. Reason for payment (so that Purchasing can identify 1099 status)

County Departments are responsible for obtaining W-9 forms from the vendors confirming that payment information provided to the County is valid. A W-9 form must be submitted with each new vendor request in order for a vendor number to be issued.
  8. Prevailing Wages apply any time a vendor employs laborers, workmen or mechanics. Vendors are required to pay prevailing rates according to Article 8 of the New York State Labor Law, no matter what the dollar amount. Pursuant to Article 9 of the New York State Labor Law, prevailing wages must also be paid for building service contracts such as moving, landscaping, elevator maintenance, etc., for any contract exceeding \$1,500 per year. Owners/operators, who have no employees, are exempt and do not need to pay themselves Prevailing Wages. Certified payrolls must be provided by the Contractor to the applicable County Department, prior to submitting an invoice. The Certified Payroll forms are required to be kept on file by the Departments for which the contract applies. The form can be found at <https://warrencountyny.gov/purchasing/forms>

All prevailing wage schedules must be requested through the Purchasing Department prior to obtaining quotes or bids. All vendors must be provided with the New York State Department of Labor PRC number assigned to each individual project so that appropriate labor rates are included in their quotes/bids. If the contract is cancelled at any time, Purchasing must be notified in order to cancel the prevailing wage schedule for that project.

On occasion, the New York State Department of Labor, Bureau of Public Works, upon receiving complaints for non-payment of prevailing wages shall direct the County to withhold monies due to a vendor. The original notice is forwarded to the Superintendent of the Department of Public Works, a copy is kept in Purchasing and a copy forwarded to the Treasurer’s Office. These monies are held until notification is received from the Department of Labor on how they are to be disbursed.

Contractors and the applicable County Department must check prevailing wage schedules for each project on the 1<sup>st</sup> of each month. The Department of Labor posts corrections to each schedule (when applicable), and both parties must be informed of all updates to ensure proper payment to Contractor’s employees, and for the purpose of checking certified payrolls.

New York State Office of General Services obtains a prevailing wage schedule for the State when awarding a State Contract. However, if the County uses the State Contract, the County is required to obtain a separate prevailing wage schedule specific to the County project.

It is the County’s responsibility to confirm that the Prime Contractor has provided all sub-contractors with a copy of the prevailing wage schedule. A verified, signed statement must be obtained from each sub-contractor, certifying that they were provided with a copy of the schedule.

- 9. A contract is always required when a service is being provided to the County (regardless of dollar amount). Where appropriate, short form contracts are available for longer or indefinite terms, only if under the quote threshold and contract amounts don’t increase. When determining the term of a contract, please take into consideration the nature of the procurement: What is the likelihood that the original term may be extended? Most contracts are capped at 3 years, with an initial one year term and two additional (optional) one year extensions. More involved contracts with larger investments by the Contractors may have longer terms which will be negotiated as part of the contract process.

In consultation with and in a form approved by the County Attorney, the Chair of the Board of Supervisors (or the Vice-Chair in his/her absence) shall have authority to execute contracts without the need for a Board Resolution for contracts not to exceed Ten Thousand Dollars (\$10,000) annually. The Department Head must provide the Chair of the Board with their approval prior to execution of the contract. Contracts over Ten Thousand Dollars (\$10,000) annually shall require Board Resolutions except for the blanket authority provided to the Superintendent of Public Works by Resolution No. 375 of 2010; the Commissioner of Social Services by Resolution No. 376 of 2017; and the Director of Public Health/Patient Services by Resolution No. 350 of 2023.

- 10. Each set of Specifications will identify the person to which questions should be directed. This is a control mechanism so that all vendors fairly receive the same information relative to the Specifications. In the event the Purchasing Agent does not know the answer, he/she will contact the appropriate department to obtain the correct response. The appropriate information will then be distributed to the vendors in the form of a written addendum. Written addenda must be issued at least five (5) business days prior to the bid opening. If the five (5) day requirement is not met, the bid opening date will be changed in order to comply.

- 11. GML §103 makes it possible for the County to standardize on a particular type of material or equipment. A Resolution approved by the Department’s standing committee and at least two-thirds majority of the Board of Supervisors, shall state that for reasons of efficiency or economy, there is a need for standardization. Such reasons may include, but are not limited to the following:

- a. Larger quantities of fewer items;
- b. More economical buying;
- c. Flexibility of inventory;
- d. Reduction of purchasing time;
- e. Lower departmental operating costs; and
- f. Reduced inventories

Adoption of such a Resolution does not eliminate the necessity for conformance to the competitive bidding requirements. Standardization restricts the purchase to a specific model or type of equipment or supply, but does not limit the vendors it can be purchased from.

12. Anticipate your needs! Once you have determined what you need, within the limitations of your budget, contact Purchasing to help you develop the specifications for the quote or bid to get the best value possible for the expenditure of tax dollars. The key is time and preparation. Turn around time is dependant on many factors ranging from the complexity of the specifications, and the need for a pre-bid meeting and addendums to the number of bids and quotes currently in process with Purchasing. **Remember, poor planning does not move your request to the top of the list!**
13. Warren County takes the position, consistent with County Law §369 and good business sense, that prepayments should not be made using County funds with the exception of travel expenses or any other prepayment justified to, and subsequently authorized by, the County Purchasing Agent in consultation with the County Attorney.
14. As standard business procedure, all County vendors are entitled to prompt payment. Invoices should be processed as soon after goods/services are obtained and in accordance to batch deadlines established by the County Auditor. **If the Auditor receives any claims for goods or services for which no Purchase Order was issued, the Purchasing Agent in conjunction with the County Auditor will have the authority to nullify the payment of such claim.**
15. The Purchasing Department endeavors to aide in getting Departments the right material on time. There will be occasions when inferior goods or services are received or they are not received in a reasonable amount of time. If the problem cannot be resolved by the Department it should be reported to Purchasing as soon as possible. This can be done via e-mail or phone. Remember to include the vendors name, bid number, the problem you have with the order and your name and extension. Purchasing will contact the vendor and try to come to a resolution of the problem. If necessary the County Attorney's Office will be contacted for assistance.
16. When developing specifications, it is understood that Departments may require the expertise of vendors. When consulting with vendors it must be clearly stated that their services, in no way, give them an advantage in the bidding or proposal process. Departments must be especially diligent in this situation to ensure that the specifications are not written in such a way that the consulting vendor is given such an advantage (i.e. writing the specifications so narrowly that only their company or firm can respond).
17. When the County is seeking commodities, public works and/or professional services to be funded by New York State and/or Federal Grants, the Purchasing Department will actively and affirmatively solicit bids for supplies and/or contracts from qualified New York State certified MBEs or WBEs as more fully set forth in Warren County Resolution No. 635 of 2014. In the event the County receives Federal grant funding, Uniform Guidance provisions apply as required by CFR Title 2 Part 200, which are attached hereto as Appendix "A".

Expenditures and contracts funded by New York State must be in compliance with New York State Executive Law Article 15-A revised on June 16, 2019 which expands the provisions for meeting M/WBE utilization goals and awarding bids to MWBE's. The law applies to professional services public works and commodities, or any combination thereof, in excess of Twenty-Five Thousand Dollars (\$25,000); and acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon in excess of One Hundred Thousand Dollars (\$100,000). Whether or not such procurements meet bidding thresholds, the Purchasing Department must be consulted to ensure compliance with the requirements of said Law.

The following language shall be included in all solicitations involving NYS and/or Federal Funding:

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution

of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of Fifty Dollars (\$50) per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of Twenty-Five Thousand Dollars (\$25,000), whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of One Hundred Thousand Dollars (\$100,000) whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of One Hundred Thousand Dollars (\$100,000) whereby the owner of a County assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the County contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The County shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

18. P-Cards may be utilized on a limited basis for purchases in accordance with the Credit Card Policy adopted by the Board of Supervisors via Resolution No. 222 of 2015 and subsequently amended by Resolution Numbers 460 of 2015, 133 of 2019, 411 of 2019, 72 of 2020, 140 of 2020, 147 of 2021, 346 of 2021, 583 of 2021, 435 of 2023 and 240 of 2024. Even when using a P-Card, procurements must be made in compliance with this policy.

## **B. Procedures Specific to Each Type of Purchase<sup>1</sup>**

### **1. Commodity/Equipment/Furniture Purchases**

These purchases may be made without a Resolution of the Board of Supervisors to the extent your Department budgeted/planned for the same. Most often, purchases made under State Contract do not require quotes, however, there are instances where quotes or a mini-bid process are required. Please read each State Contract carefully to make sure all requirements are being met before making the purchase. Some vendors may offer GSA (federal) pricing to the County. Please note, this does not exempt the County from following State and/or County procurement requirements. The GSA pricing may be used as a quote, but additional pricing is still required in accordance with the guidelines set forth below. The only exceptions to this are for Information Technology purchases offered under GSA Federal Supply Schedule 70 and Law Enforcement products under Schedule 84. Additionally, some vendors may offer to sell products as part of an Alliance or Private Cooperative. If authorized by Board Resolution, the County may purchase through National Cooperatives such as, and by way of example, Sourcewell. Please contact the Purchasing Department if a vendor has offered pricing from a national cooperative in order to determine whether or not you have authority to proceed.

#### **a. Competitive Bidding:**

Legal notices are published in the official County newspapers, informing the public of the products or services being bid. The advertisement for bids shall contain a statement of the time and place where all bids will be publicly opened and read. All bid openings will be conducted at a public meeting and all interested parties may attend.

Where bids are required, the Department Head will assist the Purchasing Agent in the preparation of specifications and contracts. It is the responsibility of the Department Head to provide an adequate description of items needed so that the Purchasing Agent may be able to prepare the specifications to procure the desired commodity or service. The Purchasing Agent will send specifications to vendors from a list prepared jointly by the Purchasing

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### **<sup>1</sup>Commodities vs. Public Works**

Purchase contracts for materials, equipment and supplies involving an estimated annual expenditure of over \$20,000.00 and public works contracts involving over \$35,000.00 shall be awarded to the lowest qualified responsible bidder only after public advertising soliciting formal sealed bids (GML §103). The term public works contracts would apply to those projects involving labor or both materials and labor where the labor portion exceeds the material component. Included in this category would be construction, paving, printing, and repair contracts.

Although not defined in GML §103, the Office of the State Comptroller has expressed the opinion that the term "contract for public work" encompasses contracts for services, or labor or construction by a "laborer, workman or mechanic service requiring wage rates". When a bid involves acquisition of both goods and services, such as a commodity where installation is required, the contract should be viewed as a purchase for purposes of the competitive bidding monetary threshold only if the service portion is minor, incidental, or customarily provided by the vendor as a component of the purchase. Conversely, if the services are extensive, substantial, or involve specialized skills, so that the acquisition of the commodity is incidental to the work, the contract should be treated as a contract for public work (1987 Opns St Comp No. 87-46, p 70). For example, a contract for interior painting of a building involves both material and labor. In most cases, the labor component of the contract will be predominant, making it a contract for public work. In contrast, replacing a boiler or furnace, while involving both labor and equipment will, in most cases, consist primarily of a charge for the equipment, making it a commodity purchase.

In determining the necessity for competitive bidding and quoting, the aggregate cost of an item or commodity estimated to be purchased in a fiscal year would have to be considered. As a general guide, items of the same or similar nature which are customarily handled by the same vendor or kind of vendor should be treated as a single item for purposes of determining whether the dollar threshold will be exceeded, i.e. plumbing materials, electrical materials, lumber, hardware, etc. It is the responsibility of the Purchasing Agent and/or County Auditor to note where purchases over the course of a fiscal year are exceeding the bidding thresholds from the purchase orders submitted by the various departments.

Items purchased through Warren County bid or the New York State Office of General Services (OGS) on State Contract have already been subject to bidding and are therefore exempt. However, all political subdivisions must purchase from the vendor holding a current State or County contract, even if another vendor's price is equal or lower, or said political subdivision must go to separate bid. The purchasing exemption made through the NYS OGS does not apply to a purchase from the State Contract vendor upon terms and conditions which materially or substantially vary from the State Contract. Used items are not exempt from bidding requirements except as noted in the exceptions section of this policy.

Agent and the Department Head for all bids. Warren County does NOT accept faxed documents where original (ink) signatures are required, i.e. on proposal pages, Non-Collusive Certifications, Corporate Resolutions and Iran Divestment Act Certifications.

**1. Commodity/Equipment/Furniture Purchases (continued)**

When soliciting bids, a “Statement of General Conditions” will be included with all specifications and contracts provided to vendors. These General Conditions will be incorporated into contracts awarded for the purchase of commodities and the procurement of public works services.

Vendor lists shall not be released prior to a bid opening as this may adversely affect the bids received and/or encourage collusion. Any requests received by a County department for this information are to be directed to Purchasing.

After the public opening of a sealed bid, a tabulation sheet shall be prepared, recording all pricing as submitted by the responding vendors. The appropriate Department(s) shall evaluate the bid responses and prepare a recommendation letter.

**b. Bid Approval Process:**

Bids for commodities will be awarded by the Purchasing Department after the following conditions are met:

- i. Sufficient appropriations are contained within the Department’s current budget (or after a budget transfer has been completed).
- ii. The Department Head provides the Purchasing Agent with a written recommendation for award indicating that the lowest bid meets the intent of the specifications. **NOTE: Commodity bids do not require a Resolution unless the lowest bid is not accepted.**

**c. Bidding Timeline:**

The following represents the estimated amount of time required to complete a bidding cycle. Timelines for commodities and services will be different. Times may change depending on the complexity of the project. Not all items pertain to all bids. The cycle does not begin until Purchasing is able to move your project to the top of its system. ie: first come, first served. If in doubt of the Purchasing workload at any given time, give the Purchasing Department a call to see how long it will be before you can get your project started. These are meant as a guideline, not a rule. Times may be shorter or longer depending on the circumstances.

- 1. Requisition or request for bid comes to Purchasing
- 2. Plus up to 15 working days until Purchasing begins bidding process
- 3. Plus 5 working days for Purchasing to review documents
- 4. Plus appropriate time to supply Purchasing with approved set of documents
- 5. Plus 1 working day for printing of documents (except large Construction projects)
- 6. Plus 5 working days for papers to publish Notice to Bidders (Saturdays only, Purchasing Department’s deadline is the Monday before the Saturday publication)
- 7. Plus 5-20 working days for vendors to pick up bids
- 8. Plus 1 day for prebid meeting (if applicable)
- 9. Plus 1-3 working days for tabulation / evaluation by Purchasing Department
- 10. Plus 5 working days for each addendum
- 11. Plus 1 day for opening of bids
- 12. Plus a minimum of 7 calendar days for review of bid results by the using department or by consultants.
- 13. Get on the agenda for all appropriate committees including sending all necessary documentation, evaluations, resolutions, etc.
- 14. Plus appropriate days to receive all necessary committee endorsements
- 15. Board of Supervisors Meeting (this may require 2 meetings)
- 16. Plus 1 working day for “Notice of Award” to be mailed to successful vendor
- 17. Plus 10 calendar days to receive contracts, bonds etc.
- 18. Plus anticipated delivery time (best guess or check with vendors)

**1. Commodity/Equipment/Furniture Purchases (continued)**

**d. Dollar limit guidelines:**

- \$1 - \$3,000.99: Purchases can be made at the discretion of the Purchasing Department and/or Department Head. All equipment/furniture costing more than \$3000.00 aggregate, (ex. 10 chairs costing \$350 each for a total of \$3,500) requires 3 verbal quotes. For coding purposes, ANY equipment/furniture with a useful life of more than one year shall be a .2 object code regardless of cost.
- \$3,001 - \$10,000.99: Documented verbal quotes from at least 3 separate vendors, if available. If 3 quotes cannot be obtained, the Purchasing Agent must be consulted before the goods are ordered. When the lowest quoted item is deemed as not acceptable, documented facts must support the decision and approval must be obtained from Purchasing BEFORE the item is ordered.
- \$10,001 - \$19,999.99: Formal written or fax quotes from at least 3 separate vendors, if available. If 3 quotes cannot be obtained, the Purchasing Agent must be consulted before the goods are ordered. When the lowest quoted item is deemed as not acceptable, documented facts must support the decision and approval must be obtained from the appropriate committee, and a Board of Supervisors Resolution adopted BEFORE the item is ordered.
- \$20,000 & Up: Sealed bids in conformance with GML §103. When the lowest bid is deemed as not acceptable, documented facts must support the decision and approval must be obtained from the appropriate committee, and a Board of Supervisors Resolution adopted BEFORE the item is ordered.

COMMODITY PURCHASES	AS PER PURCHASING AND/OR DEPT. HEAD	3 VERBAL QUOTES	WRITTEN QUOTES	
			3	Other
Under \$3,000.99 (.2 & .4 codes)	X			
\$3,001 - \$10,000.99		X		
\$10,001 - \$19,999.99			X	
\$20,000 & up				Bid

- e. Best Value Methodology - see section II(B)(3) for complete guidelines.

2. **Public Works Projects/Contracts**

A Board of Supervisors Resolution must be adopted to award a Public Works bid and authorize a contract and hence acquisition of the services. In some instances, Departments have been provided, by Resolution, with general authority to enter into Public Works contracts within certain parameters. On-call service contracts may be entered into for smaller projects (quotes or bids must be obtained on a per hour basis with a mark-up for materials). However, if a project is expected to exceed the public works threshold of Thirty-Five Thousand Dollars (\$35,000), then a bid specific to that project, or portions thereof, must be established. The Thirty-Five Thousand Dollar (\$35,000) threshold includes public works expenditures, as well as materials/commodities purchased as part of the public works project. However, if a project is undertaken by the County workforce, the commodity needed for that project shall be acquired pursuant to the County Purchasing Policy in accordance with the commodity thresholds. If contract labor or services should be needed for that project, the same will be independently bid or otherwise acquired pursuant to the County Purchasing Policy in accordance with the public works threshold. Regardless of the source of funding, i.e. grant funding or County funding, the County Purchasing Policy must be adhered to. (Please note that a "project" can be 2 or more construction projects lumped together for bidding purposes.)

Plan holders lists shall not be released prior to a bid opening as this may adversely affect the bids received and/or encourage collusion. Any requests received by a County department for this information are to be directed to Purchasing. Construction bids are an exception as allowing subs to contact bidders will most likely result in better pricing.

After the public opening of a sealed bid, a tabulation sheet shall be prepared, recording all pricing as submitted by the responding vendors. The appropriate Department(s) shall evaluate the bid responses and prepare a recommendation letter. When required, the using Department will request a Resolution to be presented to their standing committee and then sent to the Board of Supervisors for final award. The using Department shall also handle any renewal Resolutions through their standing committee submitted with the proper supporting documentation provided by Purchasing.

Resolutions for multi-department use are handled by the predominant Department and are submitted to the appropriate Committee for approval.

a. **Competitive Bidding:**

See Paragraph II(B)(1)(a) above.

b. **Bid Approval Process:**

- a. Bids for public works projects will be awarded by a Board of Supervisor's Resolution after the following conditions are met:
  - i. Sufficient appropriations are contained within the Department's current budget (or after a budget transfer has been completed).
  - ii. The Department Head provides the Purchasing Agent with a written recommendation for award indicating that the bids received meet the intent of the specifications.

c. **Bidding Timeline:**

See Paragraph II(B)(1)(c) above.

Note: The amount of time required is dependant on the frequency the Board meets. Remember, if you miss the Board meeting you may delay the start of the project for up to a month.

**d. Dollar limit guidelines:**

- \$1 - \$5,000.99: At the discretion of the Department Head.
- \$5,001 - \$19,000.99: Written or fax quotes from at least 3 separate vendors, if available. When the lowest quote is deemed as not acceptable, documented facts must support the decision, and approval must be obtained from the Board of Supervisors, by Resolution, BEFORE the services are ordered.
- \$19,001 - \$34,999.99: Formal written or fax quotes from at least 4 separate vendors, if available. When the lowest quote is deemed as not acceptable, documented facts must support the decision, and approval must be obtained from the Board of Supervisors, by Resolution, BEFORE the services are ordered.
- \$35,000 & Up: Formal sealed bids according to GML §103. When the lowest bid is deemed as not acceptable, documented facts must support the decision, and approval must be obtained from the Board of Supervisors, by Resolution, BEFORE the services are ordered.

PUBLIC WORKS Wage rates and Board Approval Required	AS PER PURCHASING AND/OR DEPT. HEAD	WRITTEN QUOTES		
		3	4	Other
Under \$5,000.99	X			
\$5,001 - \$19,000.99		X		
\$19,001 - \$34,999.99			X	
\$35,000 & up				Bid

e. **Best Value Methodology - see section II(B)(3) for complete guidelines.**

f. **Retainage:**

Retainage is a form of security for proper completion of the work under construction contracts. Under General Municipal Law section 106-b(1), the County will retain five percent of each progress payment to the Contractor if the Contractor is required to provide a performance bond and a labor and material bond in the full amount of the contract. In all other cases, the County will retain 10 percent of each progress payment. The contract dollar amount that will be subject to this provision will follow the capitalization threshold as follows:

<u>Contract Purpose</u>	<u>Retainage Threshold</u>
Land Improvements	\$25,000
Buildings & Improvements	\$50,000
Infrastructure	\$250,000

Exceptions - This policy does not apply to the following:

1. Unit price contracts where Contractors are paid per unit of work when complete and approved by the County.
2. Contracts subject to administrative requirements for Disadvantaged Business Enterprise Programs for Federally-assisted contracts.
3. Contracts which require only one payment in full after the County has reviewed and approved work.
4. Term agreement contracts which cover emergency work and work as needed during the term of the contract.

**3. Best Value Methodology**

General Municipal Law §103 now provides local governments greater flexibility in awarding contracts by authorizing the award of purchase contracts, including contracts for service work (but excluding any purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of the Labor Law) on the basis of best value. With the increased complexity of the goods and services that the County must obtain in order to serve taxpayers, it is critical to consider selection and evaluation criteria that measure factors other than cost in the strictest sense. Best value procurement links the procurement process directly to the County's performance requirements, including, but not limited to, selection factors such as useful life span, quality and options and incentives for more timely performance and/or additional services. Best value procurement can provide much needed flexibility in obtaining important goods and services at favorable prices, and can reduce the time to procure such goods and services.

"Best value" means the basis for awarding contracts for services to the offeror which optimizes quality, cost and efficiency, among responsive and qualified responsible offerors. Such basis shall reflect, whenever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor of offerors that are small businesses or certified minority or women-owned business enterprises as defined in subdivision one, seven, fifteen and twenty of section three hundred ten of the Executive Law to be used in evaluation of offers for awarding of contracts for services.

When developing solicitation documents for competitive bids for the award of purchase contracts including contracts for service work, the Purchasing Agent may, and subject to the requirements herein and the applicable requirements set forth in this policy, determine that an award of a purchase contract shall be based upon best value methodology. In making such determination, the Purchasing Agent shall consider the recommendation, if any, of the Department Head or designee of the Department the purchase contract is being procured for. The Department Head or designee shall, in all instances, obtain the approval of the Purchasing Agent to utilize best value methodology prior to issuance of the competitive bid documents.

Requirements: Where the basis for an award of a purchase contract will be the best value offer, the Purchasing Agent shall, in all instances:

- a. Document in the procurement record as a component of the competitive award process and in advance of the initial receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted.
- b. Shall select a formal competitive procurement process in accordance with guidelines established under this policy and document the determination in the procurement record. The process of selection shall include, but may not necessarily be limited to, a clear statement of need; a description of the required specifications governing performance and related factors; a reasonable process for ensuring a competitive field; a fair and equal opportunity for offerors to submit responsive offers; and a balanced and fair method of award. Where the basis for award is best value, documentation in the procurement record shall, where practicable, include a quantification of the application of the criteria to the rating of proposals and the evaluation results, or, where not practicable, such other justification which demonstrates that best value will be achieved.
- c. The solicitation shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted. Where appropriate, the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by the County in its determination of best value.

#### 4. Professional Services

Professional Services are not subject to competitive sealed bidding requirements, but are subject to the guidelines of GML §104-b for competitive pricing to be obtained for these services. When a Department Head determines that professional services, except for legal services pursuant to §501 of County Law are necessary, they must solicit proposals by obtaining written quotes and/or letting RFPs depending upon the anticipated cost for service (see below). Upon receiving responses, the Department Head will then bring proposals before the appropriate committee. The cost of said services shall be outlined as price per hour and/or total cost, and the names of qualified, licensed persons to perform said services will be presented to the committee. Data from other counties or individuals may be used at this time to compare costs. Department questions as to which services require Requests for Proposals should be directed to the Purchasing Department.

Engineers and other professionals may be retained in accordance with any of the following award methods:

- a. The "Lowest Cost for Service" method which allows for awarding to the lowest proposer, **OR** other than the lowest proposer when the lowest proposal is deemed as non-responsive. Documented facts must support the decision and approval must be obtained from the appropriate committee. A Board of Supervisors Resolution is required prior to award.
- b. The "Best Value" method, based on weighted average scores from all criteria stated in the RFP specifications and submitted by sealed proposals; or
- c. The "Two Envelope" method where criteria is stated in the RFP specifications and professionals submit two separate sealed envelopes, one with the Proposal, the other with the Price. First, all Proposals are opened and the three "best" are selected. Only the "best" Proposal price envelopes will be opened and the low price will determine the award.

Proposals must be formally opened at a set time. The aforesaid methods must be authorized by the appropriate Board of Supervisors committee or used when required by Federal or State Law, Rule or Regulation.

When the County is seeking professional services to be funded by Community Development Block Grant ("CDBG") funding, a Notice to Professionals must be advertised in the official County newspapers, as well as the appropriate MWBE publications required by New York State. The Purchasing Department is responsible for placing said ads as part of the procurement process provided an RFP is required, and in all other instances the Department Head shall bare similar responsibility.

Proposals for professional services will be awarded by a Warren County Board of Supervisor's Resolution after the following conditions are met:

- a. Sufficient appropriations are contained within the Department's current budget (or after a budget transfer has been completed).
- b. The Department Head provides the Purchasing Agent with a written recommendation for award indicating that the bids received meet the intent of the specifications.

If passed, a service contract shall be prepared by the County Attorney and signed by the Professional before services are rendered. Contracts may contain the option for an extension for a second or third year, or more, before new RFP's need to be processed.

A Board of Supervisors Resolution must be adopted before services are ordered and shall be referenced on the Purchase Order together with the appropriate quotes.

**See Paragraph II(B)(1)(c) above for bidding/RFP timeline.**

**3. Professional Services (continued)**

Thresholds for seeking proposals is determined by the anticipated cost as follows:

\$1 - \$5,000.99: No solicitation of quotes or proposals is required at the discretion of the Department Head (quotes or proposals are encouraged when practical).

\$5,001-\$49,999.99: Written quotes from at least 3 qualified sources, where available. When the lowest quote is deemed as not acceptable, documented facts must support the decision, and approval must be obtained from the Board of Supervisors, by Resolution, BEFORE the services are ordered.

\$50,000 & Up: RFP through the Purchasing Department from at least 3 qualified sources, where available. When the lowest proposal is deemed as non-responsive, documented facts must support the decision, and approval must be obtained from the Board of Supervisors, by Resolution, BEFORE the services are ordered.

PROFESSIONAL SERVICES Board Approval Required	AS PER PURCHASING AND/OR DEPT. HEAD	WRITTEN QUOTES	
		3	RFP
\$1 - \$5,000.99	X		
\$5,001 - \$49,999.99		X	
\$50,000 & Up			X

**\*\*For purchase contracts and service contracts that must be procured pursuant to competitive bidding or RFP under General Municipal Law §103 and §104-b, in the event that no bids or proposals are received, the Purchasing Department shall re-advertise in a manner that provides for broader circulation, if at all possible. If no bids or proposals are received after re-advertisement, the goods or services may then be procured on the open market.\*\***

**C. Exemptions and Exceptions to Purchasing Policy:**

1. It will NOT be necessary to seek quotes, RFP's or bids to comply with this Purchasing Policy for the following, however, contracts for services shall still be required (unless it's determined by the County Administrator, Chairperson of the Board and/or the County Attorney that one is not required):
  - a. Emergencies: GML §103(4) describes an emergency as an urgent need affecting the health and safety of citizens, which requires immediate action, where the occurrence or condition is "unforeseen". Lack of anticipation or planning cannot be deemed as a cause for declaring an emergency. A true emergency does not exclude the need for securing competitive pricing, only the formal bidding process. An exception to the competitive bidding requirements exists for emergency situations. There are three basic statutory criteria to be met in order to fall within this exception. These are that: (1) the situation arises out of an accident or unforeseen occurrence or condition; (2) public buildings, public property or the life, health, safety or property of the political subdivision's residents are affected; and (3) the situation requires immediate action which cannot await competitive bidding. When the Board of Supervisors passes a Resolution that a public emergency exists, the public interest dictates that purchases are made at the lowest possible costs, seeking competition by informal solicitation of quotes or otherwise, to the extent practicable under the circumstances. The County Attorney and the Chairperson of the Board shall be consulted and will make a recommendation as to how to proceed. The Board of Supervisors' committee chairperson (and committee, if time permits) shall also be advised.
  - b. Employment and Training Services obtained through SUNY Adirondack and/or Washington-Saratoga-Warren-Hamilton-Essex (WSWHE) Board of Cooperative Educational Services for educational services.
  - c. Membership dues and conference fees.
  - d. All Physicians, Dentists and any Medical Providers for departments including, but not limited to, the Health Services Department, Warren County Sheriff's Office, Office of Emergency Services, Self-Insurance, Countryside Adult Home and the Department of Public Works. Also included shall be counseling services for the Office of Community Services. Data from other counties or individuals may be used to compare costs.
  - e. Attorneys needed for a particular or specialized requirement as reviewed and approved by the Finance Committee.
  - f. Process Servers required due to extenuating circumstances, i.e. time constraint or out-of-state services, which are NOT covered under any other active County contract(s).
  - g. Situations not required by Law such as New York State Executive Law, Article 2B, State and Local Natural and Man-Made Disaster Preparedness Subsection 29A Suspension of Other Laws.
  - h. Subscriptions for updates to existing Law Libraries.
  - i. Public works services where, upon the determination by the Department Head, it is not feasible to determine the amount to be spent for repairs to vehicles, equipment or machinery (outside of standard repairs to be handled by County employees including auto body repairs), until the item is inspected and/or dismantled and a cost for inspection or diagnosis has already been incurred and for which it would not be practical to transport the equipment or machinery for multiple quotes. If auto repairs are authorized by the Insurance Carrier as a result of an accident, Department Head

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may proceed upon the recommendation of the County Attorney.

- j. Pursuant to GML §103(6), surplus and second hand supplies, material or equipment may be purchased without competitive bidding or competitive offering from the Federal Government, the State of New York or from any other political subdivision, district or public benefit corporation.
- k. When procurements for goods or services are funded by State and/or Federal agencies, and procurement policies other than Warren County’s are required, by law, to be followed, the Federal and/or State procurement policies shall supercede the County’s Purchasing Policy.
- l. Produce purchases which shall not exceed Twenty Thousand Dollars (\$20,000) in the aggregate on an annual basis, due to the volatility of the market, large minimum order requirements, and remoteness of some County sites. In the event of large orders over One Thousand Five Hundred Dollars (\$1,500) per site, quotes must be obtained.

2. Quotes or proposals are not required for Sole Source & Single Source Commodities or Services

Competitive bidding is not required under GML §103 where the subject of the contract is controlled by a monopoly, or where there is only one possible (sole) source from which to procure certain patented goods or services, and therefore no possibility of competition exists. Should certain supplies or materials be obtainable only from a specific manufacturer, then a true monopoly would exist and the purchase would not be subject to bidding requirements. The mere likelihood that only one firm will bid, however, is insufficient to justify a sole source procurement. Further, a political subdivision may not artificially create a sole source situation such as by, without proper justification, tailoring bid specifications to limit competition to only one bidder.

In determining whether a sole source item is required in the public interest, the County should show, at a minimum:

- a. The unique benefits to the County of the item or service as compared to other products or services available in the marketplace;
- b. That no other product or service provides substantially equivalent or similar benefits;
- c. And that, considering the benefits received, the cost of the item or service is reasonable in comparison to other products or services in the marketplace.

In addition, the County should document that, as a matter of fact, there is no possibility of competition, as from competing dealers or distributors. The sole source exception may apply, for example, in those instances when:

- d. Services from a regulated public utility are available from only one source;
- e. There is only one source from which to acquire equipment which meets state-mandated requirements; or
- f. A political subdivision, which owns equipment uniquely suited to or compatible with a particular make of equipment, has adopted a standardization resolution for that make of equipment and the equipment is only available from one source.

A sole source can be a manufacturer, software developer or service provider that sells direct and there are no other sources offering an “or equal.” Prior to a vendor being considered a sole source, a letter on the vendor’s official letterhead must be on file with the Purchasing Department detailing their sole source status.

A single source could be a distributor/wholesaler/retailer that has a contractual agreement for a specific territory to the exclusion of others. Should you have a situation involving a single source supplier, a letter on the manufacturer’s letterhead must be on file with the Purchasing Department confirming the single source authorized vendor.

Should there be ANY possibility of purchasing the item from two or more vendors, sealed bids should be requested after public advertising. Contracts ARE required when services are being provided regardless of sole source or single source status.

3. True Leases are not subject to the previous purchasing rules but rather must comply with the following requirements.

True leases are neither purchases nor contracts for public works, and thus, are not subject to bidding under the General Municipal Law. County policy however, requires that:

- a. After a Department has been given budget funding and approval to lease equipment, unless the lease is on State Contract, RFP's must be obtained through the Purchasing Department. Where a lease will not exceed a total of Two Thousand Dollars (\$2,000) annually, no RFP shall be required. Quotes must be obtained and the Purchasing Agent shall sign the lease as indicated in Section II(C)(3)(e) below.
- b. A written explanation must be sent to Purchasing when the lowest lease quotation or response to an RFP is not taken, and a Board of Supervisors Resolution must be obtained;
- c. Appropriations must be specifically available for the lease (this will be considered authorization by the Board to enter into the lease);
- d. The lease agreement entered into may be for multiple years but must:
  - i. not contain any automatic buyout or automatic renewal clauses;
  - ii. contain a non-appropriation clause; and
  - iii. address the disposition of the equipment at the end of the lease so that the vendor pays the cost for return of the equipment, etc.
- e. All lease agreements shall be treated as purchases and signed by the Purchasing Agent; and
- f. While the lease agreement may not contain an automatic renewal clause, at the end of the lease term, departments may extend the lease agreement beyond the original term for a period of up to 18 months without securing additional quotes or engaging in an RFP process provided that:
  - i. the lease payments do not increase;
  - ii. the department has appropriations therefore; and
  - iii. Purchasing Agent approval is received.Any extension longer than eighteen (18) months must be justified to, and authorized by, the Purchasing Agent.

## SECTION IV

III. PURCHASE ORDERSA. General

The Purchasing Department is designated to review and approve Purchase Orders. It is the individual Department Heads responsibility to ensure that expenditures are within the budgetary appropriations and that the proper Department account is charged.

Should there be insufficient funds available, Departments must do a budget transfer and secure all the necessary approvals before the order can be processed.

Most purchases exceeding Seven Hundred Forty-Nine Dollars and Ninety-Nine Cents (\$749.99) require a Purchase Order. The Purchase Order provides a formal document authorizing the purchase of goods and services as well as the necessary authority to pay vendor claims and proof of tax-exempt sales. Purchase Orders are prepared by the Department with all the necessary documentation such as contracts, quotes and insurance forms (where applicable) on file.

The Purchasing Department verifies the following information when approving a Purchase Order:

1. Vendor/vendor number
2. County contract/resolution/bid number/quotation information/state contract number
3. Comments/special instructions
4. Description of goods and services being ordered
5. Quantity/unit of measure
6. Unit price/extension and total cost
7. Commodity codes/budget codes
8. Asset status (if over \$1,500)
9. Attached documents are correct/complete (i.e. state & national contracts, piggyback documents from other Municipalities, Travel Authorization Forms, etc.)

The Purchasing Department will determine if the best method of procurement has been followed. If available, a current County bid, NYS contract or National Contract may be suggested. If none apply, the formal bid or quotation process may be commenced depending on estimated annual expenditures.

Once the Purchase Order has been approved by the Purchasing Department, it is posted by the Treasurer's Office and is then available for use.

**In all instances, Purchase Orders are to be completed before a purchase is made.** The only exceptions are exempt and emergency purchases as described below.

If at any time a Department finds they will exceed the competitive bidding threshold for a particular product or service, they should notify the Purchasing Department to allow time for specifications to be developed and the formal bid process to be completed, to meet their anticipated needs.

Purchases of Seven Hundred Forty Nine Dollars and Ninety-Nine Cents (\$749.99) or under do NOT require a Purchase Order. The following additional purchases do NOT require a Purchase Order. Purchases billed to the Department on a monthly basis not requiring Purchase Orders are Postal costs, Internet and Telephone charges, and routine Printing needs, which are to be handled by the Print Shop, via a Printing Order Form. Also exempt from the Purchase Order requirement are mileage, utilities and gas. To obtain routine maintenance and repairs, a Work Order Form must be completed and submitted to the Buildings & Grounds Department at the Municipal Center. Requests for shelving, bookcases, bulletin boards, and computer work stations may also be handled in this manner. When Buildings & Grounds funds are available for such requests, there will be no charge for Work Order requests to the individual departments. However, if Buildings & Grounds funds are not available or otherwise committed, it is the responsibility of the department to purchase required

materials. Department Heads must be responsible for making sure that all these procedures are complied with as outlined in this Purchasing Policy.

**B. Blanket Purchase Orders**

A Blanket Purchase Order (BPO) is created for products or services that are purchased on an “as needed” basis from a vendor throughout the year where the dollar value will vary for each purchase. These are issued for a maximum period of twelve (12) months and must be reissued at the beginning of each fiscal year.

For vendors used by all County Departments, each Department will issue a BPO for their Department only. There has to be quotes, a bid and/or a contract established with the vendor and insurance on file (if required) before a BPO can be issued.

PLEASE NOTE: Whenever possible, BPO’s must be for the total amount (or aggregate) amount to be spent with the vendor annually or for the term of the bid and/or contract. The Purchasing Department issues several commodity bids that are for less than one-year terms. The BPO’s for the commodity bids should only include enough funding for the term of the bid and not an annual total. If multiple budget codes are involved in the purchase, the department may either assign multiple codes to one PO, or individual PO’s may be submitted for each code even if the PO’s are less than Seven Hundred Fifty Dollars (\$750.00).

Departments are responsible for providing the BPO number to the vendor and verify that the number also appears on the documentation sent to Audit for payment processing.

**C. Emergency Purchase Order**

General Municipal Law Section 103 (4) defines an emergency as “a public emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants requires immediate action”.

If an emergency arises, the department must contact the Chairperson of the Board of Supervisors and the County Administrator to obtain approval prior to making any emergency purchases. Purchasing may be contacted for assistance in procuring products or services required to deal with the emergency. If the Chairperson of the Board of Supervisors and the County Administrator determine there is a true emergency, the vendor who can immediately provide the required goods or services will be given prime consideration for the purchase.

The Purchasing Department will **not** approve an Emergency Purchase Order when the purchase is not justified, where the purchase is being made to circumvent established procedures, or where there is a lack of proper planning.

**D. Purchase Order Checklist**

For reference purposes, the following checklist should be used when submitting PO’s:

- √ Is the vendor remit to address correct (submit vendor form to Purchase if a change is required).
- √ Is the description complete? (One-time message should include bid number, state contract number, quotes and/or any other information relevant to the purchase). If the one-time message indicates that the purchase is from a sole source vendor, a copy of the sole source letter must be [provided to the Purchasing Department or] attached as a document to the PO.
- √ Is the form type “REGULAR-REGULAR”? (“REG-Regular” should not be selected.)
- √ Deliver by Date and Expiration Date fields must be left blank.
- √ Is the correct Resolution Number referenced in the Resolution Field (not in the one-time message)? Confirm that the authorizing resolution is current.

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- √ Is the dollar amount correct? Does it match the contract or quote amount? We cannot approve PO's that exceed the authorized amount.
- √ Create New Asset Box - if the item is less than \$1,500 use the item code for items <\$1500 which will automatically uncheck the asset box.
- √ Contracts - If applicable, has the contract been signed? The Purchasing Department will not approve PO's until it's confirmed that the contract is fully executed. If the contract is for an exact dollar amount, it must be attached to the PO prior to approval.

SECTION V

IV. ASSET MANAGEMENT

The purpose of the asset inventory management system is to establish proper procedures for monitoring the movement of fixed assets to maintain accurate reporting of assets values as required by NYS Audit and Control.

A. Fixed Assets

Fixed assets are defined as those properties the County of Warren retains more or less permanently, not for sale, but for utilization in the normal course of operations.

Fixed assets will always imply tangible fixed assets. The general accepted practice, as in Warren County, is to record and report fixed assets at their historical acquisition cost. The cost of a fixed asset should include all expenses of transporting the asset to the proper location and placing it in the condition necessary for its intended use. Only items costing One Thousand Five Hundred Dollars (\$1,500.00) or more and with a useful life of more than one year will be inventoried.

Upon receipt of an asset valued at One Thousand Five Hundred Dollars (\$1,500) or more, the Treasurer’s Office will issue a numbered inventory sticker to be attached to the new asset. Stickers are necessary to provide positive identification of assets. They also provide a quick and accurate method of identifying assets during the annual physical inventory. If a sticker is lost or damaged the Department should contact the Treasurer’s Office.

Please note that all stickers must remain on the item until the time of sale or disposition. When sold or scrapped, the sticker shall be removed and placed on the Treasurer’s Office copy of the Physical Inventory Deletion Form.

Each Department Head has the ultimate responsibility to conduct and maintain the individual inventory pertaining to that Department. It is also the responsibility of the Department Head to evaluate on a continuing basis the suitability and need for materials, supplies and equipment. If they should become obsolete by reason of age, wear or technical advancement or should become surplus, unnecessary for the operation of his/her department, the department inventory manager should send an e-mail to the Purchasing Agent with details and condition of the item for sale or disposal. The Department will then complete a work order to have the item removed either for the sale or disposal.

B. Capital Assets

Capital assets include property, plant, equipment and infrastructure assets (e.g. roads, bridges, airport runways and similar items). Such assets are recorded at historical cost or estimated historical cost. The reported value excludes normal maintenance and repairs, which are essentially amounts spent in relation to capital assets that do not increase capacity or efficiency of the item or increase its estimated useful life. Donated capital assets are recorded at estimated fair market value of the item at the date of donation.

The capital assets are capitalized at certain thresholds and depreciated using a straight line method over their useful lives as follows:

<u>Capital Assets</u>	<u>Capitalization Threshold</u>	<u>Useful Lives (Years)</u>
Land Improvements	\$25,000	20
Buildings & Improvements	\$50,000	40
Vehicles & Equipment	\$5,000	5-10
Infrastructure	\$250,000	10-40

## SECTION VI

### V. TRANSFER AND SALE OF SECOND-HAND EQUIPMENT

The Purchasing Agent is designated by the Board of Supervisors to be responsible for the salvage control program. The same precautions must be taken when disposing of property as when purchasing. A Physical Inventory Deletion Form is needed for items sold, scrapped or traded in. Surplus equipment may be transferred to another department where it is needed by using a Property Transfer Form. Both forms are available through the Purchasing Department. The Purchasing Agent is solely authorized to sell or trade in used and/or obsolete equipment to a vendor, even those under State Contract, and to accept a trade in allowance from such vendor. If all above procedures have been exhausted, the Purchasing Agent will arrange to sell such articles at a widely advertised public auction, on-line auction through a contracted Auction, or on GovDeals. Items that have no value and are broken beyond repair, must be properly disposed of by the appropriate Department

Department personnel assigned the task of inventory management are to report any surplus equipment or materials they have to the Purchasing Department. These items will be made available, by the Department Head (with pictures and detailed descriptions) to all other County Departments on a first-come first-served basis. If an asset remains unclaimed after 5 business days, the Purchasing Department will make available to the towns, village and city in Warren County using the same pictures and description. If unclaimed by local municipalities within 5 business days, then the Purchasing Agent will determine the most beneficial disposition of the surplus equipment.

Any vehicle or equipment that requires a title to be signed for transfer will be handled by the Purchasing Agent and/or the Superintendent of the Department of Public Works or his designee.

Items under the asset threshold of \$1,500 sold to another municipality shall require proper documentation of the sale, i.e. invoice of sale and completion of a deletion form created specifically for this purpose and available through the Purchasing Department. Funds shall be deposited in Purchasing Department Revenue Code A.1345 2665 unless legally required to be deposited elsewhere.

## SECTION VII

### VI. PURCHASING POLICY - GENERAL CONDITIONS

- ▶ The Purchasing Agent is appointed at the pleasure of the Board of Supervisors and is responsible for reviewing and administering the purchasing policy of Warren County.
- ▶ Employees of the Purchasing Department shall maintain effective and professional public, vendor and customer relationships.
- ▶ To maintain a high level of quality service to Warren County Departments and Municipal Subdivisions, Purchasing staff shall participate in educational opportunities offered in the purchasing field, and keep abreast of current developments in market conditions, pricing, new products and the Law.
- ▶ The Purchasing Policy herein shall be administered in accordance with all ethical rules called for by the County of Warren.
- ▶ Any County Officer or employee who has, will have, or acquires an interest in, any actual or proposed contract with the County of which he/she is an officer or employee, shall publicly disclose the nature and extent of such interest in writing to the Board of Supervisors as soon as he/she has knowledge of an actual or prospective interest. This written disclosure will be made part of the official minutes of the Board of Supervisors. **If an officer or employee has a reason to believe that he/she may have a conflict of interest, the office of the County Attorney should be contacted immediately.**
- ▶ Each Purchase Order will be examined by a member of the Warren County Purchasing Department and processed according to the guidelines set forth under the section of applicable Purchasing Procedures.
- ▶ The Warren County Purchasing Department and Department Heads will maintain adequate documentation of all action taken in connection with each method of procurement. Such documentation may include, but not be limited to any and all pertinent Board Resolutions, Memoranda, Written Quotes, Contracts and any other appropriate form of documentation.
- ▶ Opportunity will be provided to all qualified responsible suppliers to do business with the County. To this end, the Purchasing Department will maintain a listing of potential bidders for the various types of material, equipment, supplies and services used by County Departments. This list will be used for the distribution of notices for bids and quotes. Any supplier may be included on the list upon request.
- ▶ Suppliers will be removed from the bidders list if they make a formal written request, or if the Purchasing Agent finds the supplier to be an irresponsible bidder. This is determined by failing to provide proof of responsibility, having repeatedly made slow or unsatisfactory delivery of supplies or services, or having been found by a Court of competent jurisdiction to have engaged in unlawful employment or business practices within the previous 12 months.
- ▶ Supplies used by various County Departments should be uniform whenever consistent with operational goals in the interest of efficiency or economy. The material, equipment, supplies, and services purchased by Warren County shall be of the quality and quantity required to serve ALL departments in a satisfactory manner, as will be determined by the requisitioner and the Purchasing Agent.

- ▶ Credit cards or P-Cards whose use is approved by the Clerk of the Board of Supervisors are held by same and signed out for use by County staff. Some Departments hold cards specific to their operations and reference is herein made to the County Credit Card Policy for further details.
- ▶ On occasion, County Departments are asked by vendors to complete credit applications in order to be able to set up an account. Said applications should not be returned as the County is not applying for credit. In most cases, a Purchase Order is sufficient documentation for the vendor to set up an account.
- ▶ No official or employee will be interested financially in contracts entered into by the municipality (as defined in Section 800 of General Municipal Law). This also precludes acceptance of gratuities, financial or otherwise, as stated in the Warren County Code of Ethics.
- ▶ The County of Warren will not be deemed responsible for any commitment made at the departmental level circumventing these procedures. If County procedures are circumvented, disciplinary action may be taken.
- ▶ Salespersons are encouraged to visit the Purchasing Department prior to or in conjunction with initial, individual Department contact.
- ▶ The Legislative, Rules & Governmental Operations Committee will annually review the policies and procedures set forth in this manual prior to adoption by the Warren County Board of Supervisors.
- ▶ The unintentional failure to fully comply with the provisions of GML §103 and 104-b shall not be grounds to void any action taken or give rise to cause of action against the County of Warren, the Purchasing Department, or any officer or employee thereof.
- ▶ The County Attorney and the Warren County Board of Supervisors shall make the final decision regarding any issues related to procurement of goods and services for Warren County.
- ▶ Standard lists of commonly used items shall be jointly developed for all categories or groups of supplies by the Purchasing Agent and the appropriate requisitioners. These lists shall be used as a basis for determining the feasibility for obtaining quotations on quantity purchases or the necessity of advertising for formal bids.
- ▶ It is the responsibility of the Purchasing Agent to make alternative suggestions to the requisitioner if, in the judgment of the Purchasing Agent, the specifications would restrict competition or otherwise preclude the most economical purchase of the required items. In case of disagreement as to the content of the specifications, the Board of Supervisors, after reviewing all available data, should make the final determination.
- ▶ The Purchasing Department offers a vendor library which includes many reference materials. NYS OGS contracts, vendor catalogues, preferred source catalogues, industrial buying guides, and all materials pertaining to Warren County bids. These materials may be viewed in the Purchasing Department Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m.
- ▶ When a low bidder proposes an alternative as an “equal” to that specified, it is the responsibility of the Department Head to determine whether the proposed substitution is, in fact, an equal.

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- ▶ Grant/Revenue and Asset Forfeiture funding is NOT exempt from the County’s Purchasing Policy or GML §103 or §104-b. These funds are still considered to be taxpayer money and procurement guidelines must be followed as with any other budgetary appropriation.
  
- ▶ The Purchasing Department posts all public bid documents on the County’s WCEAS system, including, but not limited to:
  - \* Specifications
  - \* Recommendation Letters
  - \* Resolutions
  - \* Extension Letters
  
  - \* Addenda
  - \* Award Letters
  - \* Tab Sheets

If a bid document is not posted, please contact the Purchasing Department for further information.

# **APPENDIX “A”**



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SUBPART - Post Federal Award Requirements

§ 200.318 - General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of

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contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

#### § 200.319 - Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in

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this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

#### § 200.320 - Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) *Micro-purchases - (i) Distribution.* The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) *Micro-purchase awards.* Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) *Micro-purchase thresholds.* The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold

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higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) *Non-Federal entity increase to the micro-purchase threshold up to \$50,000.* Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) *Non-Federal entity increase to the micro-purchase threshold over \$50,000.* Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) *Small purchases - (i) Small purchase procedures.* The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) *Simplified acquisition thresholds.* The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) *Formal procurement methods.* When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) *Sealed bids.* A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

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(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) *Proposals.* A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement.* There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

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(5) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§ 200.322 - Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§ 200.323 - Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste

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management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.324 - Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.325 - Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

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(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### § 200.326 - Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.