

Revision

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CITY OF ROME
PURCHASING DEPARTMENT

Policy & Procedure Manual

SAVED UNDER *S DRIVE*: PPP MANUAL

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INTRODUCTION

Section 104b of the General Municipal Law requires municipalities to adopt internal policies and procedures governing all purchases of supplies and services not required to be competitively bid under General Municipal Law Section 103.

A. MISSION

The Purchasing Department shall promote the City's best interest by providing a professional purchasing system of quality and integrity, whereby; all persons involved in public purchasing are treated fairly and equitable. In addition, the value of public funds is maximized and a sufficient supply system is available for all departments and/or agencies.

B. APPROPRIATION REQUIREMENT

Before the City may expend municipal funds; it must first appropriate funds for the purpose. Before a purchase order is provided to a supplier or contractor, or a contract is entered into, it should be approved by the fiscal/budget officer indicating the availability of an appropriation for such purpose. If there is no appropriation or an appropriation is insufficient, the purchase order or contract should not be executed/ entered into until the appropriate steps are taken to amend the budget, ensuring the necessary funds are authorized and available.

C. GOAL

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

D. OBJECTIVES

- a) Promote timely procurement of supplies, equipment and services necessary to the daily operation of the City.

- b) Promote prudent spending of City funds by obtaining maximum value for purchasing dollars spent by ensuring competition. Promote fair and open competition among vendors in an impartial manner.
- c) Promote buying techniques which encourage economies of scale, thereby ordering materials and services in large quantities.
- d) Provide guidance, oversight and problem resolution to City departments and agencies and ensure compliance with City Purchasing Policies and Procedures.
- e) Simplify, clarify and streamline the procurement process of the City. Make the Purchasing Policies and Procedures followed by the City as consistent as possible.
- f) Ensure fair and equitable treatment of all persons/vendors who deal with the City.
- g) Ensure that all interested suppliers understand how to do business with the City.
- h) Maintain liaison with vendors providing goods/services to the City, including the resolution of complaints regarding those goods/services.
- i) Treat all prices and technical information submitted by suppliers as confidential in order to preserve a good business reputation and obtain competitive prices.

E. PURCHASING DEPARTMENT RESPONSIBILITIES

The Purchasing Department is to provide efficient service to the departments in the procurement of goods and services that are of the best value from responsible vendors.

It is the Purchasing Department's responsibility to handle *all* aspects of the procurement process, including the identification and development of sources, assistance to departments in the development of specifications, solicitation of bids, proposals, and quotations and interacting with vendors.

F. VENDOR REGISTRATION WELCOME

The Purchasing Department maintains a list of qualified vendors for solicitation of quotes and bids.

If you wish to apply, you can contact the Purchasing Department to have your company's name added to the City of Rome Vendor Bid List.

The form, ***Becoming A City Vendor***, can be found on our website www.romenenyork.com under Purchasing Department; it can also be faxed or mailed.

G. PROHIBITION AGAINST GIFTING

Under the New York State Constitution, a municipality is prohibited from voluntarily expending, transferring, or conferring municipal money, goods or services for the benefit of private individuals without receiving any consideration or compensation, unless the expenditure is in furtherance of a public purpose. For the purposes of competitive bidding and procurement policies, a municipality may not constitutionally enter into a contract for public works or purchase contract with a private entity without receiving proper consideration, as detailed above. If the municipality does not receive proper consideration from the private entity when a public works or purchase contract is entered into, the municipality has essentially given an unconstitutional gift, which results in a void contract.

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

H. CONFLICTS OF INTEREST PROHIBITED

General Municipal Law 801 prohibits municipal officers and employees from having an interest in a contract with the municipality when they have the power or the duty, either individually or as a member of the municipal board, to: negotiate, prepare, authorize or approve the contract; authorize or approve payment thereunder; audit bills or claims under the contract; or appoint an officer or employee who has any of the aforementioned powers or duties. Accordingly, should any of these issues arise when contemplating a contract for purchase or public work, a municipal official is prohibited from having an interest in same.

Further when procuring property and services under a Federal award, 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. As required by eCFR 200.318, the Mayor or his/her designee must administer disciplinary procedures for violations of these standards by officers, employees, or agents of the City.

PURCHASING PROCEDURES

A. GENERAL

1. Almost all purchases require a purchase order signed by the Purchasing Agent. In only a limited number of circumstances detailed in number 7. below may a voucher approved by the appropriate department head be used instead of a purchase order.
2. The dollar amount of the product or service being acquired is the basis for determining the correct purchasing procedure. This dollar amount is determined on a citywide basis, not on a departmental basis.
3. Departments should plan purchases sufficiently in advance to allow the Purchasing Department to obtain the best price and/or overall service.
4. Departments will send vendor price quotes to the Purchasing Department, before or after they have entered a requisition. The Purchasing Department will review all price quotes to confirm accuracy prior to the issuing of a purchase order. In the event the department is unable to obtain the required number of quotes it shall indicate on the Audit Control Summary sheet (see below) each vendor contacted that would not quote and so indicate. This is in addition to showing the name and quote of each vendor that does quote.
5. As a result of the need to conform with eCFR 200.318 for the purchase of property and services under Federal awards, the Department of Community and Economic Development will apply and attach the Contract and P.O. Established Checklist for all purchase orders and vouchers prepared by the department.
6. In the case of purchases or projects financed in whole or in part by federal aid, the Purchasing Agent / Finance Clerk will verify that the chosen vendor / contractor is not on the exclusion list of the General Services Administration System for Award Management (SAM) prior to creating a purchase order.
7. In the case of contracts with federal grants of \$30,000 or more, the Purchasing Agent / Finance will file a Federal Funding Accountability and Transparency Act (FFATA) subaward report by the end of the month following the month in which the contract is executed.

Please use the ***Audit Control Summary Sheet*** to record quotes on. This is used as the backup information for auditors to verify proper procedure has been followed.

The Purchasing Agent has the right 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.

When a low bidder proposes an alternative as “an equal” to that which was specified, the Purchasing Agent will consult with the Department Head or his/her authorized designee to determine the validity of the alternative.

In the event of any claim(s) made by an unsuccessful bidder concerning or relating to the issue of “equal or better”/ “or equal”, the successful bidder agrees – at his own cost and expense – to defend and indemnify such claim(s) and agrees to hold the City of Rome free and harmless from any and all claims for loss or damage arising out of this transaction for any reason whatsoever.

8. The Purchasing Agent is to be notified in writing of any default in contractor performance.
 - a. Records are to be kept by department heads of vendor inconsistency and any evidence of unsatisfactory vendor performance during the course of any contract by completing a ***Vendor Complaint Form*** and forwarding it to the Purchasing Agent. This procedure should be followed each time a vendor does not perform to the standards of our bid or request for proposal
 - b. The Purchasing Department will send a certified letter with the Vendor Complaint Form attached, giving the vendor an opportunity to respond to the complaint and/or rectify the problem.
 - c. The Purchasing Department, in conjunction with the Law Department, will be responsible for determining, prior to contract award, if the vendor has continued to be “responsible”
9. Vouchers may be used instead of purchase orders for the following payments:

- Reimbursement of mileage and meal expenses
- Insurance payments
- Utility bills
- Bond payments
- Postage, shipping
- Grant payments provided grant approved by Council
- Payroll taxes, sales taxes, payroll claims services
- Tax redemption / refunds
- Emergency repairs within threshold of this policy and state law
- Routine maintenance and service contracts
- Return of bid deposits
- Professional services other than engineering or architectural services related to a capital project
- Payments to government agencies

B. Standardization Resolution

General Municipal Law enables the Common Council to adopt a Standardization Resolution by vote of at least three-fifths of all the members for supplies, materials and equipment. The resolution shall contain a full explanation of the reasons for its adoption, such as efficiency, economy, etc. and that there is a need for standardization. The passage of the resolution does not eliminate the legal necessity to conform to the competitive formal sealed bidding requirements. The award will be to the lowest responsible and responsive bidder. Any award to other than the low bidder/s will be factually documented why the award is in the best interests of taxpayers.

The make, model, catalog number, etc., are clearly defined in the specifications and any supplier able to furnish the supply, material, or equipment may submit a responsive bid/quote. Standardization eliminates the need for the inclusion of the terms “or equal”, “or equivalent” in the formal bid specifications.

The following are some circumstances that a Standardization Resolution may be appropriate:

- (1) A substantial amount of equipment of the same make is presently in use by the City of Rome and uniformity of the make is essential to economy, efficiency or safety.
- (2) Service facilities are adapted to the handling of a make or equipment and cannot be economically converted.
- (3) The City of Rome has on hand a substantial supply of spare parts for a make of equipment, which cannot be disposed of except at a substantial loss.
- (4) The design, plan or method of construction or installation is suited to a particular make of equipment and cannot be altered economically.
- (5) Local conditions require the use of a particular make of equipment to the exclusion of all others.
- (6) City of Rome employees are trained to operate one make of equipment and cannot be trained economically to operate other makes.
- (7) The need for uniformity is of such special importance as to warrant the standardization.
- (8) The need for employee or public safety.

*In the event of any claim(s) made by an unsuccessful bidder concerning or relating to the issue of “equal or better”/ “or equal”, the successful bidder agrees – at his own cost and expense – to defend such claim(s) and agrees to hold the City of Rome free and harmless from any and all claims for loss or damage arising out of this transaction for any reason whatsoever.

C. REQUISITIONS

The Purchasing Department receives requests for supplies, services and equipment from the departments through the MUNIS Financial System. The Purchasing Agent reviews each requisition for its completion and determines the correct purchasing procedure for that order.

Requisitions with incomplete product descriptions are rejected back to the requesting department until enough information is give to properly identify the product being request.

Requisitions intended for voucher invoice entry are rejected back to the requesting department with instructions on correction.

D. PURCHASE ORDERS / PACKING SLIPS

Requisition Entry through Munis creates and assigns a Purchase Order Number.

A) Two copies of the purchase order are printed and distributed as follows:

- Accounting Copy – Sent to Accounts Payable.
- Vendor Copy – Sent via email or fax or verbal to vendor.

B) Packing Slips – Sent to Accounts Payable to be matched with invoice

C) Blanket Purchase Orders - Blanket purchase orders are used for items which are frequently purchased from the same vendor on an “as needed” basis during a certain calendar period. A blanket purchase order eliminates the processing of many individual purchase orders and allows the departments flexibility in ordering and receiving commodities.

A blanket purchase is normally issued monthly or quarterly. Longer periods **up to 1 year are allowed** at the discretion of the Purchasing Agent. In no event however can the period of a blanket purchase order go over a calendar year end.

Exceeding the dollar amount appropriated on a purchase order is, in fact, placing an order without the approved appropriation of funds. The New York State Comptroller’s office states that this practice does not conform to accepted accounting principles.

E. CANCELLATIONS

Departments will notify the Purchasing Department of the complete or partial cancellation of a purchase order so that the encumbrance may be liquidated.

F. VIOLATIONS

A violation of the Purchasing rules as governed by Municipal Law and the City Charter will be documented on the Purchasing Violation Form and a copy will be provided to the Mayor, City Treasurer and to the City Auditor.

G. PAYMENTS IN EXCESS OF PURCHASE ORDER

Accounts Payable will pay invoices that do not exceed the following threshold amounts above what the Purchase Order was issued for.

\$50.00 Shipping Threshold Not To Exceed over original Purchase Order amount.

\$25.00 Product/Service Threshold Not To Exceed over original Purchase Order amount.

If an invoice is received in excess of above thresholds, approval by Department and Purchasing Agent will be processed by use of the **Invoice Certification Form** provided by the Treasurer's Office.

H. CREDIT CARD PROCEDURE WITH USE OF PURCHASE ORDERS

1. List of available cards and authorized limits are kept in vault with credit cards.
2. Treasurer's Office has access to remove cards from vault.
3. Treasurer's Office will maintain credit card log of who, where, out time, returned time.
4. All purchases on credit cards, must have corresponding valid purchase order.

Vendor copy of purchase order will be given to employee to present for possession of credit card.

5. Receipt and card will be returned to Treasurer's Office within 24 hours.
6. Disciplinary procedure for misuse of credit cards: Possible reasons for misuse of City credit card would be for unauthorized purchases or failure to return within 24 hours. A "Special Report" will be sent to Mayor for his disposition on the situation.

I. LEASE REPOSITORY

Leases are another form of contract that requires legislative approval. Purchasing Department will prepare a Lease Schedule and hold copies of all leases and corresponding legislation for access by auditors

PROCUREMENT THRESHOLDS

Article 5A of the Laws of New York refers to Public Contracts. Under Article 5A, General Municipal Law Sections 103 and 104b refer to Letting of Contracts and Procurement Policies and Procedures, respectively. In addition, the City of Rome must conform with eCFR 200.317 through 200.326 for the purchase of property and services under a Federal Award. As a result of the above referenced state and federal standards as well as its own needs, the City of Rome has adopted the following procedures under which procurements of commodities, equipment or goods shall be made.

A. PURCHASE OF LIKE COMMODITIES UNDER OR OVER \$20,000

\$0.00 up to \$999.99	<i>Multiple quotations recommended; but not required.</i>
\$1,000.00 up to \$4,999.99	<i>Minimum of 3 vendor price quotes required and recorded on Audit Control Summary Sheet with Sealed Quotes as appropriate.</i>
\$5,000.00 up to \$19,999.99	<i>Minimum of 3 <u>written</u> vendor price quotes required and recorded on Audit Control Summary Sheet with Sealed Quotes as appropriate.</i>
\$20,000.00 and over*	<i>Sealed bids in conformance with General Municipal Law Section 103.</i>

Sealed bids procedure followed in conformance with general Municipal Law 103 when purchases of a single commodity or “like” commodities, can reasonably be expected if the yearly aggregate amount to exceed \$20,000, or when the yearly aggregate amount to be spent on a public works contract will exceed \$35,000 in any fiscal year. **Cannot break up contracts to avoid thresholds.**

B. PUBLIC WORKS PROJECTS UNDER OR OVER \$35,000

\$0.00 up to \$999.99	<i>Multiple quotations recommended; but not required.</i>
\$1,000.00 up to \$4,999.99	<i>Minimum of 3 vendor price quotes required and recorded on Audit Control Summary Sheet with Sealed Quotes as appropriate..</i>
\$5,000.00 up to \$34,999.99	<i>Minimum of 3 <u>written</u> vendor price quotes required and recorded on Audit Control Summary Sheet with Sealed Quotes as appropriate.</i>
\$35,000.00 and over*	<i>Sealed bids in conformance with General Municipal Law Section 103.</i>

C. EXCEPTIONS TO THE GENERAL REQUIREMENTS OF GML 103 AND 104 REQUIRING PUBLIC BIDDING FOR A & B ABOVE.

<p>Professional Services</p>	<p><i>Professional services generally include services rendered by attorneys, engineers and certain other services requiring specialized or technical skills, expertise or knowledge, the exercise of professional judgment or a high degree of creativity. An RFP can provide a mechanism for fostering increased competition of professional services and can ensure that these contracts are awarded in the best interests of the taxpayers.</i></p>
<p>True Leases</p>	<p><i>A true lease is one where no buyout option exists. A lease to purchase, even if the buyout option is only \$1.00, is not a true lease. Only a true lease is exempt from competitive bidding because it is not a purchase or public work project. An RFP can provide a mechanism for fostering increased competition of true leases and can ensure that these contracts are awarded in the best interests of the taxpayers.</i></p>
<p>NYS OGS Contracts</p>	<p><i>Purchases from New York State Office of General Services Contracts. http://www.ogs.state.ny.us/purchase/SearchBrowse.asp</i></p>
<p>NYS Preferred Source</p>	<p><i>Purchases from New York State Preferred Source, such as NYS Industries for the Disabled, Industries for the Blind, Corcraft Correctional Services Program. http://www.ogs.state.ny.us/procurecounc/psguidelines.asp</i></p>
<p>County Contracts</p>	<p><i>Purchases off other County's contracts when correct piggybacking language is part of said contract to allow.</i></p>
<p>The United States or any agency thereof, any state or any other political subdivision or district therein</p>	<p><i>Subdivision 16 of GML 103 significantly expanded the political jurisdictions whose contracts may be "piggybacked" on as exceptions to GML 103. The underlying contract must have been made in a "manner that constitutes competitive bidding consistent with state law". Thus, the contract must have been "let to the lowest responsible bidder or on the basis of best value in a manner consistent with..." GML 103 and the contract must have been made available for use by other governmental entities. The latter means that the other governmental entity has taken steps to make its contract available for New York local governments.</i></p>
<p>Municipal Cooperation</p>	<p><i>Example: Purchase of surplus equipment directly from another municipality.</i></p>

D. USE OF COOPERATIVE PURCHASING AGREEMENTS

As a result of Subdivision 16 of GML 103, the City is able to utilize cooperative purchasing organizations which can reduce the cost of goods and services purchased by aggregating the purchasing power of public agencies nationwide. The Council has approved the following organizations for use:

- Omnia Partners, National IPA via Resolution 32 dated February 13, 2019
- Sourcewell via Resolution 54 dated May 8, 2019
- The Interlocal Purchasing System via Resolution 135 dated December 13, 2023

E. LOCAL 10% PROCUREMENT PREFERENCE

The City of Rome Purchasing Department has incorporated a 10% Local Procurement Preference which may be given to vendors that are City of Rome taxpayers. When requesting verbal or written quotes a local vendor may have preference over a non-local vendor if they are within 10% of the non-local vendors submitted quotation.

Example:

Quote #1 Local vendor - \$1,100

Quote #2 Non-Local Vendor \$1,000

Quote #3 Non-local Vendor \$1,300

* Quote #1 would be accepted because it came within 10% of the non-local vendors submitted quote.

This preference is to be used when soliciting pricing for quotations only and not as part of the formal bidding process. Any amount over \$20,000 must follow the formal bidding process.

THE BID PROCESS

Compliance with the competitive bidding laws is mandatory by all New York municipalities; non-compliance can result in severe penalties and courts invalidating any contracts entered into where the procedure was not strictly followed.

General Municipal Law Sections 103 requires competitive bidding for purchase of commodities or like commodities with an anticipated value of \$20,000 or more or public works projects with a value of 35,000 or more. The competitive bidding process ensures that all bidders receive the same information and the bid award shall be made to the lowest responsible bidder. In assessing whether a bidder is responsible, the individuals responsible should consider factors such as a bidder's capacity and financial ability to complete the contract, accountability, past performance, reliability and integrity. Also, a bidder is entitled to reasonable notice and opportunity to be heard before a determination of non-responsibility is made.

For all expenditures of Federal awards, eCFR200.213 prohibits awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from participation in Federal assistance programs. Potential vendors for all expenditures of Federal awards should first be researched on the System for Award Management (<https://www.sam.gov/portal/SAM/>) to ensure they have not been debarred or suspended from performing federally funded work. Federal awarding agencies can refuse to reimburse costs incurred to pay such vendors and can require a return of previously awarded funds.

The City of Rome must perform a cost or price analysis for all purchases funded with federal grant awards in an amount excess of the Simplified Acquisition Threshold (currently \$150,000) in conformity with eCFR200.323. This analysis must be performed prior to receiving bids or proposals. The City of Rome relies upon the professional engineer which it employs to oversee the project to perform this analysis.

What Types of Contracts Fall Under the Competitive Bidding Laws?

The State Comptroller has opined that the term "purchase contracts" applies to the procurement of commodities, such as materials, equipment, or supplies, and the term "contract for public work" concerns labor or construction projects. Oftentimes, it is difficult to ascertain whether a contract is a purchase contract or a contract for public work. This analysis is an important one, as different threshold levels apply depending upon how the contract is classified. Essentially, a municipality has to look to the total character of the contract to determine where it falls in the competitive bidding spectrum. Contracts involving services may be characterized

as purchase contracts if the services provided are intrinsically connected with the commodity or are provided by the vendor as an essential part of the purchase.

Thus, if the purchase component of the contract is minor and the service aspect is significant, the contract should be characterized as a contract for public work, with the \$35,000.00 threshold applying. Conversely, if the public works component of the contract is minor and the purchase component is significant, the contract is a purchase contract, with the \$20,000.00 monetary threshold applying. While the cost ratio of goods to services is not the sole determining factor in classifying the contract, it is helpful in determining whether or not the services are incidental to the purchase of the commodity.

The average time frame for the sealed bid process is 8-9 weeks, start to finish. This takes into account that all contracts must be approved by the Board of Estimate and Contract and their scheduled meeting calendar.

A. DEVELOPING BID SPECIFICATIONS

The Purchasing Department writes a bid using the department's list of specifications as the specific criteria against which vendors' bids are evaluated. These specifications must be absolutely clear to all the potential bidders. The bid will be awarded to the lowest cost supplier that meets all of the department's needs, exactly as defined by the department in the specifications.

Departments will not be allowed to add or delete requirements after the bid opening. The evaluation will be based solely on all requirements set forth in the bid. During the bid process, the vendors must be absolutely certain they are all considering the same thing. The vendor needs to offer the appropriate product at the right price.

Brand Names – Brand names can be used in bid specification. If the Purchasing Department is supplied with a brand name, the buyers will generally specify "brand name or equal" on the bid. A brand name gives the parties involved an idea of what type and quality of product is required. In many cases, several distributors can supply a given brand. The most important features or requirements must be addressed, since no two brands are identical. In all aspects, describe which aspects are needed for any product offered to be equivalent. Make it clear at the outset what would be considered "equivalent".

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

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

B. ADVERTISEMENT FOR BIDS

When a municipality begins soliciting bids, it must advertise for such bids in the municipality's official newspaper. Municipalities may use bidder lists and send bid notices to those bidders on the list, but should make all efforts to ensure that all known prospective bidders are included on the list. In the event that a municipality received no bids, it should re-advertise and directly contact vendors known to provide the type of goods or services sought in the advertisement. If neither of these steps produces bids, the municipality has fulfilled its obligations under the General Municipal Law and may directly negotiate for the required good or service. Note that in this instance, the municipality must act in accordance with its own procurement policies and procedures under General Municipal Law 104(b).

If the municipality fails to comply with the advertising requirement, any contract awarded thereto could be set aside as void. The logic behind this principle is that advertising promotes competition, which therefore results in higher quality goods and services at lower prices. The advertisement constitutes a mere solicitation for bids, and a contractual relationship is not formed with the municipality accepts a bid from the lowest responsible bidder.

The advertisement calling for bids should contain the time and place where all of the bids received will be opened. A general description of the project and the name of the municipality should also be included in the advertisement. Per GML 103 (Art 5A), the advertisements for public bids and requests for professional services are to be published in the designated official City newspaper, *The Rome Sentinel*, with a 5 day minimum notice between publication and bid opening. Advertisements should also be posted online at <https://www.bidnetdirect.com> and <https://romenewyork.com>. *The 5 day minimum notice between posting and bid opening also applies to this method of advertisement.*

C. Contracting with Small and Minority Businesses and Women's Business Enterprises and Labor Surplus Area firms

In the case of all Federal award expenditures and State construction contract expenditures of \$100,000 or more, the City must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

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 (1) through (5) of this section.

D. BIDDERS LIST

In order for specifications to be sent to any vendor, that vendor must first contact her Purchasing Department by phone, email, fax or mail requesting that they be sent.

Any vendor that requests specifications to be sent by FedEx, or other overnight mail, must pay for this service. No bid or proposal packages will be faxed to any vendor under any circumstances.

E. BID DEPOSITS

Bid deposits. When deemed necessary by the purchasing authority, bid deposits shall be prescribed in the public notices inviting bids. Bid deposits may be in the form of money order, certified check or appropriate bid bond. All such money orders, certified checks or bid bonds shall be made payable to the Rome City Treasurer. Unsuccessful bidders shall be entitled to return of surety where the purchasing authority required such. A successful bidder shall forfeit any surety required by the purchasing authority upon failure on his part to enter into a contract within 30 days after the award unless such time is extended by the city. This subsection shall be deemed to be a general ordinance pursuant to Charter section 103.

F. PERFORMANCE BOND

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

G. PREVAILING WAGES

Under New York State Labor Law, contractors and subcontractors must pay the prevailing rate of wage and supplements (fringe benefits) to all workers under a public work contract. Employers must pay the prevailing wage rate set for the locality where the work is performed. Prevailing wage is the pay rate set by law for work on public work projects. This applies to all laborers, workers or mechanics employed under a public work contract.

What is Public Work?

- A three-prong test is applied to determine whether a particular project is public work and subject to the prevailing wage requirements of Labor Law § 220 and article I, § 17 of the State Constitution. First, a public agency must be a party to a contract involving the employment of laborers, workmen, or mechanics. Second, the contract must concern a project that primarily involves construction-like labor and is paid for by public funds. Third, the primary objective or function of the work product must be the use or other benefit of the general public.

H. ADDENDUMS

As stated in the Request for Bid Terms and Condition, Purchasing Department will issue an addendum to clarify the bid requirements and/or the bid specifications. When a discrepancy, ambiguity or omission is revealed, the Purchasing Department will issue an addendum to clarify the bid requirements. The addendum is sent by fax, email or mail to all vendors that received the bid. It is also numbered and put on Bidnet as an addendum to original bid.

The Purchasing Department will make every effort to ensure that the appropriate vendors receive addenda. The addendum procedure will also be used to extend the bid date to give the vendors/contractors sufficient time to submit a responsible bid.

I. RECEIPT OF BIDS

Vendors/contractors must mail, express or deliver sealed bids to the Office of the City Clerk on or before the bid deadline specified in the legal advertisement.

As the bids are received, they are immediately date and time-stamped by the designated time clock and a bid receipt is recorded in the City Clerk's Office.

No bids are accepted after the bid deadline. Those received after the bid deadline will be returned to the sender unopened.

No fax-transmitted bids will be accepted under any circumstance. All bids are kept in a secure location.

At the appointed time, the bids will be announced and opened. The bids will be read aloud and the bid process appropriately recorded on a tally sheet.

J. BID RECOMMENDATION PROCESS

The Purchasing Agent will communicate the bid results to requesting department for a departmental review and a recommendation or rejection of the lowest responsible bidder. The department shall review the package and send a memo or email of the recommendation or rejection to the Purchasing Department.

If the lowest responsible bidder is not recommended, then a detailed written explanation from the Department Head must be attached.

The Purchasing Agent will review the package and department recommendation and, if necessary, contact the Law Department to clear up any legal technicalities, then approve or disapprove the department's recommendation.

K. BID AWARD PROCESS

If a contract is required for an individual department, the department head must submit the package with recommendations to the Purchasing Department. After the approval for the contract is granted, the Purchasing Department will then process any necessary notice of award or purchase order. If the bid is for various City facilities, the Purchasing Department will then process it through the appropriate approving authorities. When the award process is finalized, the entire bid package becomes a permanent file in the Purchasing Department.

L. BEST VALUE COMPETITIVE BIDDING

A. Authority and Purpose

Section 103 of the New York General Municipal Law to allow the award of certain purchase contracts (including contract services) subject to the competitive bidding under General Municipal Law SS103 on the basis of "best value" as defined in section 163 of the New York State Finance Law. The "best value" option may be used, for example, if it is more cost efficient over time to award the good or service to other than the lowest responsible bidder or offered if factors such as lower cost of maintenance, durability, high quality, and longer life can be documented.

B. Awards Based on Best Value.

The Board of Estimate may award purchase contracts, including contracts for services, on basis of "best value" as the term is defined in New York State Finance law SS163. All contracts or purchase orders awarded based on value shall require Board of Estimate approval.

C. Applicability

The provisions of this chapter apply to the City of Rome purchase contracts, including contracts for service, involving an expenditure of more than \$20,000, but excluding purchase contracts necessary for the completion of a public works contract pursuant to Article 8 of New York Labor Law and any other contract that may in the future be excluded under state law from the best value option. If the dollar thresholds of New York General Municipal Law SS103 are increased or decreased in the future by the State Legislature, the dollar thresholds set forth herein shall be deemed simultaneously amended to match the new General Municipal Law thresholds.

D. Standards for Best Value

1. Goods and services procured and awarded on the basis of best value are those that the Board of Estimate determines to optimize quality, cost, and efficiency, among responsive and responsible bidder or offers.
2. Where possible, the determination shall be based on an objective and quantifiable analysis of clearly described and documented criteria as they apply to the rating of bids or offers.
3. The criteria may include, but shall not be limited to, any or all of the following: cost of maintenance; proximity to the contractors; longer product life; product performance criteria; and quality of craftsmanship.

Documentation

Whenever any contract is awarded on the basis of best value instead of lowest responsible bidder, the basis for determining best value shall be thoroughly and accurately documented.

M. BID REJECTION

The City of Rome reserves its right to reject any bid(s) submitted and/or to eliminate any bidder(s) from consideration when, in the sole discretion of the City, doing so is in the best interests of the City and/or for such other reasons as may be relevant and applicable to the City's assessment of the bid or bidder's ability to perform, including, but not limited to: the bidder's performance on past bids or contracts. Further, the City reserves the right to reject all bids received and to re-bid the matter under such circumstances as deemed appropriate by the City in its sole discretion.

SOLE SOURCE

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

For example, if a political subdivision, acting in good faith and without intent to arbitrarily inhibit or restrict competition, determines that a particular patented item is required in the public interest and it is further determined that such item is available only from one source, competitive bidding may not be required for the procurement of the item.

1. The compatibility of proposed equipment, accessories or replacement parts to existing equipment is essential and the required item is available only from a single supplier. Documentation must come from the vendor and/or the distributor verifying this status.
2. An item for trial, testing or teaching purposes is available from only a single supplier. Documentation must come from the vendor and/or the distributor verifying this status.
3. A one-of-a-kind item is sold only on a “direct from manufacturer” basis. Documentation must come from the vendor and/or the distributor verifying this status.
4. Proprietary software is licensed by a company and is only provided by that company (sole support). Documentation must come from the vendor and/or the distributor verifying this status.

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

The New York State Comptroller’s Office, Division of Municipal Affairs, required that any municipal officers executing sole source documents should be prepared to “factually verify that the goods or services sought may only be obtained from single source”.

Where a standardization resolution dictates which brand maybe purchased of a particular item, a sole source designation dictates from whom that item may be purchased. For example, if a resolution exists standardizing IBM brand equipment, it does not necessarily mean that IBM Corp is the only distributor/vendor who has the ability to sell those items.

To initiate a sole source purchase, the requesting department fills out the ***Sole Source Justification Form*** with explanation.

The Purchasing Department will verify that the requested item or service is available from only one supplier, in accordance with statutes permitting sole source procurement. If there is any doubt, the Purchasing Department will contact additional vendors or seek bids if the dollar value is anticipated to exceed the \$20,000 or \$35,000 bid limits.

EMERGENCY ORDERS

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

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

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

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

The Office of the State Comptroller has suggested that, to meet these criteria, there generally must be a present, immediate and existing condition creating an imminent danger to public or private property or the life, health or safety of the residents and which makes further delay to comply with competitive bidding requirements unwarranted (198) Opns St Comp, No 81-244, p 241). Further, in as much as General Municipal Law Section 103(4) provides that the emergency must arise out of an accident or unforeseen occurrence, it is doubtful that a local government may invoke the emergency provisions in a situation which is the result of inaction or dilatory behavior on the part of officials and which, therefore, could have been foreseen (1978 Opns St Comp No 78-780, unreported: see *Rodin v Director Purchasing*, 38 Misc 2d 363, 238 NYS2d d).

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

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

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

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

The City of Rome is empowered to designate an “emergency purchase” or “emergency project” and may waive normal bidding requirements. When an item is deemed to be needed in an emergency, the reasoning must accompany the requisition by using the form called ***Emergency Purchase Form*** and sent to the Purchasing Department.

If time allows, a requisition must be submitted to the Purchasing Department via Munis and approved before the request will be considered. The Purchasing Agent will require the following information before processing an emergency purchase order request: What is needed; why is need urgent; who is suggested vendor; what is delivery lead time. If approved, the requisition will be converted to a purchase order for the Purchasing Agent to place with vendor.

After hour orders will need to be followed up with ***Emergency Purchase Form*** filled out and sent to Purchasing. After securing the above information, the Purchasing Agent will determine if the Mayor needs to be apprised of the situation before the order is placed. The Mayor will also be updated on situation after order is placed.

Sec. 2-382. Emergency purchases.

(a) Purchasing agent's authority. In case of an apparent emergency which requires immediate purchase of supplies or contractual services, the Mayor shall be empowered to authorize the securing by open market procedure, as set forth in this division, at the lowest obtainable price, any supplies or contractual services regardless of the amount of the expenditure. A full report of the circumstances of an emergency purchase shall be filed by the Mayor with the council and shall be entered in the minutes of the council and shall be open to public inspection.

(b) Authority of head of using agency. In case of actual emergency and with the consent of the Mayor, under subsection (a) of this section in cases which may exceed the limits set forth in section 2-378(1), the head of any using agency may purchase directly any supplies whose immediate procurement is essential to prevent delays in the work of the using agency which may vitally affect the life, health or welfare of the citizens of the city. The head of such using agency shall send to the purchasing authority a requisition and a copy of the delivery record and a full written report of the circumstances of the emergency.

(Code 1966, § 2-89; L.L. No. 1-1998, 1-14-98)

SURPLUS PROPERTY (SALE AND PURCHASE)

A. SALE OF SURPLUS CITY PROPERTY

Upon a department head making the determination that an item or items of personal property are no longer needed for public use, the Purchasing Agent has the responsibility to dispose of such surplus property. The department head shall contact the Purchasing Agent as soon as surplus property becomes available.

The disposal of obsolete and/or surplus items such as motor vehicles, furniture, and office equipment no longer used or needed by a City Department will be handled in the following manner:

- Items with a value of \$1,000 or more and a useful life of more than one year must be declared surplus by Board Resolution. The Purchasing Agent is to send by e-mail the description of the items to the Mayor. The Mayor will then request that the Board of Estimate and Contract pass a surplus resolution to determine the best way of disposing the items,
- Items considered to have no useful remaining life or value of under \$1,000 are to be submitted to the Purchasing Agent. The Purchasing Agent will determine the proper disposal of these items, contingent upon approval by the Board of Estimate and Contract.
 - The items may be disposed of, but not limited to the following ways.
 1. An advertisement will be placed in the designated newspapers in the form of a legal notice listing the items for sale. The advertisement shall also be posted on the City of Rome website. Sealed bids will then be received.
 2. The surplus items will be sold through public auction
 3. The surplus items will be sold through internet auction

4. The items will be offered for sale to other municipalities
5. The surplus items will be disposed of in an appropriate manner.

A biannual report is submitted to Board of Estimate and Contract reporting eBay sales.

The *Asset Deletion and eBay Surrender Form* must be filled out for every item deemed surplus and sent to the Purchasing Agent.

B. PURCHASE OF SURPLUS AND SECOND-HAND SUPPLIES, MATERIALS AND EQUIPMENT

Pursuant to General Municipal Law 103(6), a municipality may purchase surplus and second-hand supplies, material or equipment without competitive bidding from the federal government or any other political subdivision or public benefit corporation. This exception does not apply to surplus and second-hand materials purchased from private entities.

CAPITAL PROJECTS¹

Capital projects for various purposes such as the construction or improvement of city buildings and infrastructure normally require a high degree of planning and often involve the use of third party consultants and in particular engineers and architects. Normally these projects should be included in the City's Capital Improvement Plan which is prepared by the Treasurers Office for submission to the Common Council currently with the City's Annual Budget. The Treasurer will normally request submissions for this document from all department heads in the 2nd quarter of the calendar year. All submissions must be approved by the CIP Committee which at a minimum includes the Mayor, DPW Commissioner and Treasurer.

Financing is usually in the form of borrowing, state and federal grants or reserves specifically established by the Common Council in conformity with the regulations of the Office of the State Comptroller. In certain circumstances they may also be financed through the normal budget process or by budget amendment. With the exception of grant only funded projects, a Request for Legislation for the applicable financing signed by the Treasurer and the Mayor must be sent to Common Council for approval. In the case of grant only financing the applicable department head will submit a Request for Legislation for the Council to either seek permission to apply or to accept a grant. In the case of borrowing, New York State Finance Law requires that a licensed bond attorney create the applicable Ordinance for Council approval. The City Treasurer is responsible for non-grant financing and should be consulted well in advance of the need for funding. In the case of combined grant and bond financing where the latter is dependent on the award of a grant, it is critical that the department head notify the Treasurer timely to secure the necessary bond ordinance to ensure all financing is in place so that the Purchasing Agent/ Finance Clerk can create the necessary capital project accounts from which purchase orders can be created once contracts for the work are fully executed.

Completion of the approval of funding by the Common Council must precede a department head's Request for Legislation to the Board of Estimate and Contract (BOE) for a contract with the chosen vendor(s) unless sufficient funding is already included in that year's budget. Once approval by the Board is obtained, Corporation Counsel will work with the chosen vendor to prepare a contract. Once all parties have signed off the contract will be sent to the department head. The department head will in turn submit the executed contract to the City purchasing agent for creation of a purchase order to be issued to the vendor. Particularly in the case projects with federal awards of \$30,000 or more it is critical that the request for purchase order be performed within one week of issuance of the executed contract. This requirement is necessary to ensure that the Purchasing Agent / Finance Clerk has time to file a Federal Funding Accountability and Transparency Act (FFATA) subaward report by the end of the month following the month in which the contract is executed.

¹ This section includes grant only funded projects which are otherwise included under the definition of Public Works projects in section B of Procurement thresholds above.

FORMS

- *Audit Control Summary Sheet*
- *Sole Source Justification*
- *Emergency Purchase*
- *Vendor Complaint*
- *Purchasing Violation Questionnaire*
- *Becoming A City Vendor*
- *Asset Deletion and eBay Surrender Form*
- *Invoice Certification Form*