

*Recommendations
For
Local Government
Procurement Reform
In
New York State*



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LOCAL GOVERNMENT PROCUREMENT REFORM IN NEW YORK STATE

New York State Association of Municipal Purchasing Officials, Inc.

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Demands on Local Governments to provide more services have been increasing significantly on an annual basis. Funding continues to move from the federal government through state governments and down to the local government level. Local governments provide a vast array of services to their citizens, requiring increased flexibility in the procurement laws and regulations that govern how they contract for goods and services, and in addition, requires employees that are well trained in public procurement, ethics, and contract management.

General Municipal Law, which governs contracts and purchases by local governments, has not been significantly revised in over a decade. At that time, the major revision was to raise the statutory bid limits to their current levels. Since that time only a few revisions have been adopted, including two important changes in 2003. General Municipal Law was amended through the 2003-2004 budget bill to allow the receipt of electronic bids, and in addition, to allow local governments to purchase from any County (in New York) contract for commodities and certain services which do not require prevailing wages to be paid. Although these latest revisions are considered positive; they do not have a considerable effect on the statutory bid process and the way in which bids are evaluated and awarded by local governments.

Legislation introduced over the past three years in the Assembly and Senate show a concern regarding adherence to General Municipal Law requirements for competitive bidding and other contracting processes. Legislative research and audits performed by the Office of the State Comptroller have identified common occurrences of non-compliance to many of the requirements of General Municipal Law by local governments throughout the state. These include bid splitting, abuses of change orders, overly restrictive bid specifications, and failure to issue competitive bids when required. A report issued by Assemblyman Robert K. Sweeney noted the lack of any effective mechanism for assuring compliance with the competitive bidding requirements of General Municipal Law.

Before recommending revisions to the current requirements of General Municipal Law, the New York State Association of Municipal Purchasing Officials formed a Procurement Reform Taskforce comprised of local government procurement officials. The purpose of the taskforce was to identify perceived deficiencies in the sections of General Municipal Law that govern local government procurement, evaluate current local government procurement practices, identify causes of non-compliance to General Municipal Law, and to develop recommendations for Local Government Procurement Reform.

Based upon the work of the taskforce, the New York State Association of Municipal Purchasing Officials determined that:

- Training for local government employees involved in the purchasing function is basically nonexistent. The taskforce found that while ample training opportunities in public procurement exist; most local governments fail to provide sufficient funding for, nor actively support, training of those employees entrusted with spending the taxpayer's dollars.

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- Without a legislative requirement for annual training or professional certification in public procurement the deficiencies commonly found in audits performed by the Office of the State Comptroller will never be corrected.
- Most local governments do not operate under a centralized purchasing function, rather using a decentralized system that makes it more difficult to comply with competitive bidding statutes. In addition, the taskforce found that it was difficult to identify who was actually responsible or had procurement authority in these decentralized systems.
- While the current competitive bidding dollar thresholds, (\$10,000 for commodities and \$20,000 for Public Works projects) were set with the intent to save local governments considerable time and money, and to prohibit fraud and corruption at the local level, it has proven to be, in many instances, more cumbersome and costly to implement and enforce. The current bid limits apply to all local governments (City, County, Town, Village, School District, Fire District, and other municipal corporations) regardless of their size, budget, and population they serve or services they deliver. This “one-size-fits-all” approach to governing public procurement does not work well and hampers the larger local governments from using the latest contracting methods and thus from achieving the best value for their taxpayers. To illustrate this point, you only need to look at the annual budget of one of the largest county’s in the state, Nassau County with a budget of \$2.28 billion, and compare it to a budget of a small village with a budget of \$1 million. The levels of services provided by a county or city far exceed those provided by smaller government units. The result is local governments that provided vastly different levels of service have to abide by the same competitive bidding limits. Bidding limits that are already below the national average.
- There are inconsistencies between General Municipal Law, which governs procurements by local governments, and State Finance Law, which governs procurements by state agencies. In 1995, New York State Finance Law was amended to provide state agencies the statutory authority to contract for services and technology on the basis of “best value” or “low price”. This amendment provided state agencies with the ability to use the most modern contracting methods, already utilized by most other states. This authority has not been granted to local governments in New York.
- Local governments in New York are restricted from having the opportunity to utilize Government Services Administration (GSA) contracts, where allowed by the Federal Government, and other Government Group Purchasing Contracts such as the U.S. Communities Government Purchasing Alliance that bid contracts on a national basis to take advantage of the collective buying power of local governments to the benefit of their taxpayers. Currently only New York and New Jersey prohibit their local governments from utilizing U.S. Communities Group Purchasing Alliance contracts.

In summary the Procurement Reform Taskforce determined that as a result of the current statutes governing local government procurement in New York; local governments are often required to put more emphasis on the procurement process as opposed to the end result and the benefits to our taxpayers.

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Based upon the work of the Procurement Reform Taskforce, the New York State Association of Municipal Purchasing Officials, Inc. proposes the following Procurement Reform Initiatives to strengthen and modernize the local government procurement process and to increase conformance to all applicable procurement laws.

PROCUREMENT REFORM RECOMMENDATIONS

1. Statutory Requirement for Continuing Education

Current trends show that more and more governments are mandating training or continuing education on an annual basis for all those with purchasing authority and responsibility. The Federal Government now requires annual training and certification of all employees involved in procurement. States such as Texas, Florida, Ohio, Alaska and others have mandated minimum annual continuing education requirements for public purchasers, and many are moving to mandate professional certification by either the National Institute of Governmental Purchasing or the Institute for Supply Management.

Total local government spending in New York State is estimated to be in excess of \$74 billion dollars annually. Local government employees who receive little or no training in public procurement and contract management mostly perform these expenditures of taxpayer money. The Procurement Reform Taskforce believes that the current problems associated with compliance to competitive bidding laws are a direct result of inadequate training and lack of professional certification as opposed to a willful disregard of the law.

Our recommendation is for the State Legislature to pass legislation requiring a minimum of 24 hours of continuing education and training in Public Procurement subject matter every two years for all local government employees with procurement authority and responsibility.

2. Identification of Local Government Employees with Purchasing Authority and Responsibility

The current requirements of General Municipal Law, Section 104b, mandate that all local governments adopt, on an annual basis, a Procurement Policy that stipulates how that government will process all purchases and contracts that are not subject to the competitive bidding statutes.

There is currently no requirement to identify the individual or individuals (by name and title) that have the responsibility to ensure compliance with General Municipal Law requirements.

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Our recommendation is for the State Legislature to pass legislation amending General Municipal Law, Section 104b, to require that each local government, on an annual basis, to identify by name and title, the individual or individuals responsible for ensuring compliance with the requirements of General Municipal Law. (Where a local government operates under a centralized purchasing function, the Director of Purchasing shall be named. Where a local government operates in a decentralized purchasing function, all employees with authority to approve purchase requests or to specify requirements shall be named.)

3. Increase Statutory Bid Limits

Based on a 2002 national survey on Competitive Bidding Dollar Thresholds conducted by the National Institute of Governmental Purchasing, of which 76.8% of the respondents were local governments, 73.4% of the local governments respondents had competitive bidding thresholds in excess of the current New York State bidding threshold of \$10,000 for commodities and \$20,000 for Public Works Projects.

The survey showed that 53.8% of the responding governments had a competitive bidding threshold of \$25,000 or higher.

Our recommendation is for the State Legislature to pass legislation amending General Municipal Law to increase the Competitive Bidding Thresholds to \$25,000 for commodities and to \$50,000 for Public Works Projects.

4. Best Value Awards

The ability to award bids based on Best Value Analysis has become the new standard in government contracting. The ability to use factors other than purchase price to make contract awards is crucial in providing our taxpayers with the best value for their money. Based on the current requirement to award bids to the “lowest responsible bidder” cost is given extraordinary weight in the award process. When you award a contract based on low price, too often local governments end up with a product that is low in quality and fails to meet the needs of the local government.

Procurements based on the best value concept take into consideration a variety of factors, including life-cycle costs, past performance of vendors, and their ability to complete the contract on time.

Our recommendation is to amend General Municipal Law to mirror State Finance Law and give local governments the ability to award Bids and Contracts based on using “Best Value Analysis” or “Low Price”.

5. Use of Cooperative Contracts outside of New York State

The federal government has now authorized State and Local Governments to use the General Services Administration (GSA) Schedule 70 contracts for Information Technology products and services. Currently under General Municipal Law there is no exception authorized to allow the use of GSA contracts while satisfying the competitive bidding requirements.

The ability to purchase from GSA Schedule 70 contracts will give local governments an additional procurement tool to help achieve the best purchase price for their taxpayers. While there is no guarantee that a GSA contract price may be lower than that of a state contract price, having the ability to use the GSA contract provides the local government purchasing professional the opportunity to explore all options to obtain the best value. In addition, GSA contracts may provide contract pricing on goods and services not covered by a state contract, thereby allowing the local government to procure the needed items in a quick and efficient manner; without the expense of issuing a formal competitive bid. The use of the GSA contracts can also enhance the local governments ability to respond to immediate needs identified in relation to Homeland Security issues.

In addition, there are several national Government Group Purchasing Alliances that collectively bid contract requirements to take advantage of larger buying power. These groups include U. S. Communities Government Purchasing Alliance and the Western States Contracting Alliance. Both of these organizations memberships are comprised of state and local governments. Although these groups have been incorporated as not-profits, each competitive bid is issued by a state or local government entity. By pooling requirements across state lines, the Group Purchasing Alliances can usually offer increased savings to their members who purchase from the contracts. Again, while there is no guarantee that a U.S. Communities or Western States contract price may be lower than a state contract price, having the ability to use these contracts provides the local government purchasing professional the opportunity to explore all options to obtain the best value. In addition, these group purchasing contracts may provide contract pricing on goods and services not covered by a New York State contract, thereby allowing the local government to procure the needed items in a quick and efficient manner; without the expense of issuing a formal competitive bid

Our recommendation is to amend General Municipal Law and allow for the use of General Services Administration Schedule 70 contracts, U.S. Communities Government Purchasing Alliance contracts, and Western States Contracting Alliance contracts as exceptions to the current competitive bidding requirements.

CONCLUSION

The New York State Association of Municipal Purchasing Officials Executive Board, the Procurement Reform Taskforce and the over three hundred members representing municipalities

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in every county of New York State, outside of New York City, overwhelmingly endorse these proposals.

Ensuring that those involved with overseeing the expenditure of some \$74 billion dollars in New York State Taxpayer's money have a minimal amount of training and increased options with which to perform their responsibilities is little to expect. The State has already put in place requirements for training and licensing for a wide variety of trades and occupations in an attempt to protect the public. Some of these trades listed by the NYS Labor Department include Massage Therapist, School Administrator, Assessor, Driving Instructor, Insurance Adjustor, Land Surveyor, Acupuncturist, Barber/ Hair Dresser, Security Guard, Chauffer, Boiler Inspector, Certified Nurses Aide and Welder to name only a few.

The New York State Association of Municipal Purchasing Officials, Inc. believes that the protection of taxpayer's money, which our members are entrusted with, deserves at least equal consideration and look for the Governor and Legislature to support these procurement reform recommendations.