

DATE: October 24, 2016
TO: Library Trustees
FROM: Marilyn Kappenberg
RE: NYS Finance Law

The issue of purchasing commodities and awarding of contracts periodically comes up for discussion by the Trustees. I have summarized NYS Finance Law as it pertains to the procurement of goods and services for NYS tax supported government entities. Perhaps, this may clear up any confusion or misunderstandings on this issue.

“Best Value Procurement”

NYS Law Finance Law Section 163; Paragraph J: Purchasing Services and Commodities is quite clear on the subject of awarding contracts and the purchasing of commodities under the “Best Value” Statue. A few years ago, NY State allowed government tax supported entities to award contracts or purchase commodities under the newly enacted “Best Value” statue. “Best Value” under this law is defined as “the basis for awarding contracts for services which optimize quality, cost, and efficiency among responsive and responsible offers.” This law does give tax supported entities some leeway in awarding contracts or purchasing commodities to businesses that are not the lowest responsible bidder. However, all purchases and contracts awarded under the “Best Value” Statue must be carefully and completely documented to justify the bypassing of the lowest bidder. The purpose of documentation is also to ensure that any contract and estimate awarded under “Best Value” is in fact in the best interest of and will directly benefit the tax supported government entity. The sole purpose is to maximize the purchase value of public funds and not to benefit a for profit business.

Lowest Responsible Bidder

If a contract is awarded or a purchase completed is not done under the “Best Value” Statue, the law requires that it must be done on the basis of the “lowest prices from a responsive, responsible bidder”. NYS Finance Law clearly does not allow for a government entity to bypass the lowest bid proposal or estimate and award it to another higher bidder, even though the business may reside within the community. It is also totally contrary to NYS Finance Law to contact a business, local or otherwise, after bids, proposals, or estimates are received and allow a resubmission to meet the lowest bidder (collusion in favor of the for profit business). The purpose of NYS Finance laws as stated is “to maintain and promote fairness in contracting by a government entity with the business community” and “to ensure that officers and employees of a tax supported government entity do not benefit financially or otherwise”.

I did contact Bill Cullen, Library Attorney and had a lengthy discussion about this matter. He strongly suggests that NYS Finance laws must be strictly followed when any purchase or awarding of a contract involves public funds. Not to do so clearly violates the law, is not the best interest of the Library and ultimately the taxpayer.