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Raymond J. Costantino
Supervisor
Town of Lloyd
12 Church Street
Highland, NY 12528

Re: Procurement Policy

Dear Ray:

I am writing in response to your request for an opinion as to whether the Town is required to procure written requests for proposals when securing liability insurance for the Town.

General Municipal Law Section 104-b, which governs the Town's procurement policies and procedures, provides that the procurement policy may "set forth any circumstances when, or types of procedures for which, in the sole discretion of the governing body. . . , the solicitation of alternative proposals or quotations will not be in the best interest of the political subdivision or district therein." The Town's procurement policy provides that it may not be in the best interest of the Town to solicit for "professional services or services requiring special or technical skill, training or expertise. The individual or company must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity and moral worth. . ." The policy further provides that professional or technical services shall include ". . . securing insurance coverage and/or services of an insurance broker;".

The Town's procurement policy recognizes a longstanding rule that contracts for professional and other technical services which involve a high degree of special skills do not lend themselves to procurement pursuant to strict competitive bidding requirements. Contracts for professional services and services requiring special or technical skill, training or expertise are not contracts for public work, as that phrase is used in the bidding statutes and therefore are not subject to the competitive bidding mandate.

Courts have long recognized that a contract of public liability insurance does not come within the statutory requirement providing that all contracts or purchases made by a town involving the expenditure over a specified amount be made only after competitive bidding. In Lynd v. Heffernan, 286A.D. 597, the court quoted a prior case stating that "an efficient insurance company does more than write a policy. The writing of such a contract. . . involves frequent and efficient inspection of the insured property, involves prompt, honest and efficient service in the settlement of claims, and it is well known that insurance companies differ greatly in their attitude between the settling of claims." The court further stated that "the relationship between a competent insurance broker and his client is a relationship of personal trust and confidence. The contract with a broker calls for the rendition of personal services of a type uniformly held to fall outside the scope of competitive bidding requirements."

As long as the Town follows its procurement policy as set forth in Section 6 thereof, the Town is not required to obtain written requests for proposals in procuring liability insurance.

If anything further is needed, please don't hesitate to contact my office.

Very truly yours,

DI STASI MORIELLO & MURPHY LAW PLLC

By _____

Sean Murphy

SM:mb

92-289-AA-365