

Purchasing Policy

Town of Monkton

Adopted April 13, 2020

GENERAL

PURPOSE. The purpose of this Purchasing Policy is to obtain the highest quality goods and services for the Town of Monkton at the lowest possible price, to exercise financial control over the purchasing process, to promote efficiency in the procurement process, to assure realization of the principles of competitive purchasing, to clearly define authority for the purchasing function, to allow fair and equal opportunity among qualified suppliers, and to provide for increased public confidence in the procedures followed in public purchasing.

AFFIRMATIVE ACTION AND LOCAL PREFERENCE. Whenever possible, qualified small, minority and women-owned businesses shall be included in the solicitation lists for bids or non-bid purchases. If the purchase is federally funded in whole or in part, minority and women owned businesses must be included in the solicitation lists and all other affirmative action requirements outlined in the grant provisions must be followed. The Town may exercise a preference for local businesses for purchases funded exclusively by the Town but only if such a preference does not result in unreasonable prices or rates due to a lack of competition. For purchases funded in whole or in part with federal funding the Town may not exercise a preference for local businesses.

CODE OF CONDUCT. Employees, officers and agents of the Town who are involved in the procurement and selection of bids and purchases shall make reasonable efforts to avoid real, apparent or potential conflicts of interest. No employee, officer or agent of the Town shall participate in selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict 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 above, has a financial or personal interest in the firm/vendor selected for award.

An employee, officer or agent of the Town who is involved in the procurement and selection of a bid or purchase and who has a real or apparent conflict of interest must disclose that conflict of interest within the context of a duly warned Selectboard meeting that occurs before the bid selection or purchase takes place. Such disclosure must be documented in the minutes for that meeting which shall be retained as part of the official record surrounding the bid or purchase.

Officers, employees and agents of the Town will not solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub - agreements. An exception shall be made for de minimis benefits less than \$50.00 in value.

Officers, employees and agents who fail to follow the above Code of Conduct shall be sanctioned or disciplined, to the extent permitted by law, for violations of the above standards.

DOCUMENTATION. Records documenting the procurement process for any Minor or Major

purchases, as those terms are defined below, shall be included as part of the documentation accompanying the approved vendor invoice. (If there is more than one invoice for the purchase, the documentation shall accompany the initial invoice.) Records documenting Major purchases including the reason for the specific procurement method chosen, the basis for the award and contract pricing (showing evidence that the process was fair and equitable), as well as any other significant decisions that were part of the procurement process shall be maintained for a period of at least three (3) years from the date of the submission to the Federal government of the final expenditure report if the purchase or project was funded with federal grants, or until the completion of any litigation, claim, negotiation, audit, or other action involving the records, whichever is longer. Otherwise, records shall be maintained by the Town in accordance with the retention and disposition schedules as set by the Vermont State Archivist.

USE OF PUBLIC MONEY.

1. Public money shall be spent for public purposes. This includes, but is not limited to, the purchase of municipal assets, purchase of professional services, making public property improvements, payroll for public officials, community and economic development activities, official municipal functions and business meetings, etc.
2. Any use of public money that has a direct private benefit, including a benefit to a non-profit organization, must have an overriding public benefit and be approved by the Town Selectboard or the electorate if determined by the Selectboard to warrant electoral consideration.

PURCHASING AUTHORITY.

Purchasing Agents. The following employees are designated to act as Purchasing Agents for the Town:

Road Foreman/Commissioner

All employees or officers designated by the Selectboard

Purchasing Agents are responsible for ensuring that the best possible price and quality are obtained with each purchase and Purchasing Agents shall review all proposed procurements to avoid unnecessary or duplicative purchases of equipment, supplies and services. Purchasing Agents shall also ensure that competition is not restricted with limits on the geographic location of vendors, with unreasonable requirements or qualifications placed on vendors, or by allowing vendors to be selected who have engaged in noncompetitive pricing practices. Purchasing Agents shall split orders to circumvent the required procedures for purchasing amounts.

Incidental Purchases. Employees who have been designated to act as Purchasing Agents may make purchases of up to \$5,000.00 without prior approval, provided those purchases are limited to the amount of the budget authorized by the Town.

Minor Purchases. Employees who have been designated to act as Purchasing Agents may make purchases with a value between \$5,000.00 and \$10,000.00 only with prior approval of the Selectboard and are limited to the amount of the budget authorized by the Town. Although not required, competitive quotes from at least two vendors should be obtained whenever possible.

Major Purchases. All purchases over \$10,000.00 require prior approval of the Selectboard. The

Selectboard shall review all proposed procurements to avoid unnecessary or duplicative purchases of equipment, supplies and services. The Selectboard shall also ensure that competition is not restricted with limits on the geographic location of vendors, with unreasonable requirements or qualifications placed on vendors or bidders, or by allowing vendors to be selected who have engaged in noncompetitive pricing practices.

If federal funding is used for purchases between \$10,000 (\$2,000 in the case of construction projects subject to Davis Bacon requirements) and \$250,000, price or rate quotes must be obtained from two or more qualified sources following the affirmative action provision of this policy and all provisions regarding fair and unrestricted competition.

For all major purchases with a value between \$10,000.00 and \$50,000.00, price and rate quotations shall be obtained from at least two qualified vendors to ensure that the Town has received a fair and reasonable price. Vendors will be selected based on cost, the quality of the goods and services offered, and the ability, capacity, and skill of the vendor demonstrated under prior contracts with the Town.

Large purchases with a value of \$50,000.00 or more must follow a sealed bid process as outlined below.

Purchases at or exceeding \$250,000 or construction projects of any value that are funded with federal dollars must follow a sealed bid process as outlined below and also follow any procurement guidance as outlined in the grant agreement. In addition, a pricing analysis must be completed by the purchasing agent or a qualified consultant prior to issuing the request for proposal to ensure that there is a reasonable estimate against which to compare bid proposal pricing.

SEALED BID PROCESS. The sealed bid process shall be initiated by the issuance of a Request for Bids prepared by the Selectboard or its designee. Notice of the Request for Bids shall be made by letters to known providers soliciting bid responses, advertisements posted in three public locations within the Town, the Vermont Business Registry & Bid System at www.vermontbidsystem.com, and advertisements placed in a newspaper of general circulation in the region. In lieu of newspaper advertisement, a bidding service for advertising bids may be utilized. Grants may require the use of specific advertisement procedures.

BID SPECIFICATIONS. A list of bid specifications shall be prepared for each purchase over \$50,000.00 and shall be available for inspection at the Town office. Bid specifications shall include:

1. Bid name.
2. Bid submission deadline.
3. Date, location, and time of bid opening.
4. Specifications for the project or services including quantity, design, and performance features.
5. Bond and/or insurance requirements.
6. A copy of the proposed contract.
7. Any special requirements unique to the project or purchase.
8. Delivery or completion date.

9. For construction projects, language that sets a requirement for a bid guarantee in the amount of 5% of the bid price from all bidders, as well as performance and payment bonds in the amount of 100% of the contract price from the contractor awarded the bid. If federally grant funded, the bidders must also include costs for Davis Bacon compliance if that is a requirement of the federal agency providing the funding.
10. For federally funded construction projects over \$2,000, a statement that contractors will be provided with a copy of the most current wage determination (from the DOL website at <http://www.wdol.gov/dba.aspx>) and must comply with the Davis Bacon Act.
11. Language that reserves for the Selectboard the right at its sole discretion to reject any and all bids, wholly or in part, to waive any informalities or any irregularities therein, to accept any bid even though it may not be the lowest bid, to call for rebids, to negotiate with any bidder, and to make an award which in its sole and absolute judgment will best serve the Town's interest. The Selectboard reserves the right to investigate the financial condition of any bidder to determine his or her ability to assure service throughout the term of the contract.
12. A request for at least three (3) qualified references applicable to the work being bid.
13. **Cancellation Provision.** An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part, when it is found to serve the best interest of the Town. The reasons therefore shall be made part of the contract file. All specifications issued by the Town shall state that the solicitation may be cancelled in whole or in part when rejection or cancellation is in the best interest of the Town. Notice of cancellation shall be sent to all vendors solicited.

Once a Request for Bids has been issued, the bid specifications will be available for inspection at the Town office.

BID SUBMISSION. All bids must be submitted in sealed envelopes, addressed to the Town in care of the Selectboard, and plainly marked with the name of the bid and the time of the bid opening. Bid proposals will be date stamped on the outside of the envelope immediately upon receipt. Any bid may be withdrawn in writing prior to the scheduled time for the opening of bids. Any bids received after the time and date specified shall not be considered and shall be returned to the bidder unopened.

Bidders shall bid to specifications and any exceptions must be noted by the bidder. A bidder submitting a bid thereby certifies that the bid is made in good faith without fraud, collusion, or connection of any kind with any other bidder for the same work, and that the bidder is competing solely on his/her behalf without connection with or obligation to any undisclosed person or firm.

BID OPENING. Every bid received prior to the bid submission deadline will be publicly opened and read aloud by the Selectboard. The bid opening will include the name and address of bidder; for lump sum contracts, the lump sum base bid and the bid for each alternate; for unit price contracts, the unit price for each item and the total, if stated; and the nature and the amount of security furnished with the bid if required.

CRITERIA FOR BID SELECTION. In evaluating bids, the Selectboard will consider the following

criteria:

- No vendor may bid on a project if they owe any delinquent Town payments including but not limited to taxes, miscellaneous receivables, etc. Purchasing agents shall confirm that there are no delinquent payments prior to award of a bid.
- Price.
- Bidder's ability to perform within the specified time limits.
- Bidder's experience and reputation, including past performance for the Town.
- Quality of the materials and services specified in the bid.
- Bidder's ability to meet other terms and conditions, including insurance and bond requirements.
- Bidder's financial responsibility.
- Bidder's availability to provide future service, maintenance, and support.
- Nature and size of bidder.
- Contract provisions that are acceptable to the Town.
- For construction projects over \$2,000, contractor's indication of acceptance of wages in the current wage determination provided as part of the Request for Bids.
- Any other factors that the Selectboard determines are relevant and appropriate in connection with a given project or service.
- The Selectboard will not select a bidder who is listed on the Excluded Parties List System website (<https://www.sam.gov>).

In addition to the above, in the case of a contract supported by federal funds, the additional criteria shall apply:

- There shall be no preference exercised for local contractors or suppliers.
- Minority and women-owned businesses must be included in the solicitation list for the request for proposal.

CHANGE ORDERS. If specification changes are made prior to the close of the bid process, the Request for Bids will be amended and notice shall be sent to any bidder who have requested and/or received contract plans/specification for the project. All bidders must acknowledge receipt of any bid amendments made at least five (5) days prior to the bid opening for the bid to be a valid bid. Once a bid has been accepted, if changes to the specifications become necessary, the Selectboard will prepare a change order specifying the scope of the change. Once approved, the contractor and an authorized agent of the Town must sign the change order.

EXCEPTIONS. The following exceptions may apply, however there must be written documentation created and maintained that outlines the process and rationale for such exceptions:

COMPETITIVE PROPOSALS. If time does not permit the use of sealed bids, or the award will be made on the basis of non-price related factors, a competitive proposal process shall be initiated by the issuance of a Request for Bids (RFB) or Request for Qualifications (RFQ) prepared by the Selectboard or its designee that includes the factors that will be used to evaluate and compare the proposals. Bids or qualifications shall be obtained from an adequate number of qualified sources (at least two vendors) to ensure that the Town has received a fair and reasonable price

and all notification and record keeping requirements of the sealed bid process shall be followed. If architectural or engineering services are being solicited, this process should be used with the most qualified firm or individual awarded the bid and price or fees negotiated after the award. If competitive proposals are used, all of the above steps in the sealed bid process should be followed except that: 1) the bid submission need not be sealed; and 2) price will not be the primary factor in the proposal selection.

SOLE SOURCE PURCHASES. If the Selectboard determines that there is only one possible source for a proposed purchase, it may waive the bid process and authorize the purchase from the sole source.

RECURRING PURCHASES. If the total value of a recurring purchase of a good or service is anticipated to exceed \$50,000.00 during any fiscal year, the bid process shall be utilized and shall specify the recurring nature of the purchase. Once a bid has been accepted, all future purchases shall be made from that bidder without necessity of additional bids, until such time as the Selectboard votes to initiate a new bid process.

REPAIR PARTS. Purchase of repair parts is acknowledged to often be a unique purchase requirement, often necessitated by the need to purchase from a sole source vendor.

GRAVEL, SALT AND SAND. Purchase of gravel, salt and sand by the Highway Department is highly variable and prices from vendors change regularly. Ongoing purchases of these commodities are exempt as long as they are within the yearly budget.

EMERGENCY PURCHASES. The Selectboard may award contracts and make purchases for the purpose of meeting the public emergency, security or safety without complying with the bid process. Emergency expenditures may include immediate repair or maintenance of town property, vehicles, or equipment if the delay in such repair or maintenance would endanger persons or property or result in substantial impairment of the delivery of important Town services.

PROFESSIONAL SERVICES. The bid process shall not apply to the selection of providers for services that are characterized by a high degree of professional judgment and discretion including legal, financial, auditing, risk management, insurance services, consultants other contractual services that are by their nature unique and not subject to competition.

Federally funded non-competitive purchases for \$250,000 or more require a cost analysis to determine the reasonableness of the proposed pricing and should be completed in accordance with the requirements of the federal or state agency issuing the grant funding.

The foregoing Policy is hereby adopted by the Selectboard of the Town of Monkton, Vermont, this ____ day of April and is effective as of this date until amended or repealed.

SIGNATURES.

/s Stephen Pilcher
Selectboard Chair

Selectboard members:

/s Bill Martin

/s John McNerney

/s Marikate Kelly

/s Paul Low

Other Provisions to Consider

CONTRACTS

1. All contracts for services or construction shall contain the following indemnification and hold harmless language unless waived by the Selectboard:

The contractor shall and does hereby agree to indemnify, save harmless and defend the Town from the payment of any sum or sums of money to any person whomsoever on account of claims or suits growing out of injuries to persons, including death, or damages to property caused by the contractor, their employees, agents or subcontractors or in any way attributable to the performance and prosecution of the work herein contracted for, including (but without limiting the generality of the foregoing), all claims for service, labor performed, materials furnished, provisions and supplies, injuries to persons or damage to property, liens, garnishments, attachments, claims, suits, costs, attorneys' fees, costs of investigation and of defense. It is the intention of this paragraph to hold the contractor responsible for the payment of any and all claims, suits, or liens, of any nature and character in any way attributable to or asserted against the Town, or the Town and the Contractor, or which the Town may be required to pay. In the event the liability of the Contractor shall arise by reason of the sole negligence of the Town and/or the sole negligence of the Town's agents, servants or employees, then and only then, the Contractor shall not be liable under the provisions of this paragraph.

FUNDRAISING

All fundraising in the name of and accounted for by the Town must be approved by the Town Selectboard.

RESTRICTED GIFTS All restricted gifts in the name of and arranged for by the Town must be approved by the Selectboard.

INSURANCE

1. The insurance requirement for contractual services over \$50,000 shall be a combined single limit of two million dollars (\$2,000,000) aggregate for general liability and property damage including vehicle coverage, unless otherwise modified by the Selectboard. Prior to the commencement of work, the bidder shall provide the Town with a certificate from the insuring company indicating that such policies have been issued and are in force and that said insurance companies agree to notify the Town at least thirty (30) days prior to the date of termination of or change in said policies. The Town may seek up to five million dollars (\$5,000,000) in insurance coverage for work of a value that would deem the additional coverage appropriate.

2. If a service provider is a sole proprietor or partner owner(s) of an unincorporated business exempt from carrying Workers' Compensation insurance under the provisions of 21 VSA § 601(14), prior to commencing work for the Town they must agree to sign a Non-Employee Work Agreement and the Liability Hold-Harmless Agreement with the Town to affirm that:

- They are not an employee of the Town
- They are working independently
- They have no employees
- They have not contracted with other independent contractors

- They understand they have the right to purchase workers compensation insurance and have elected not to do so.
- They hold the Town harmless for any injury or death they cause or any damage to property they cause.

3. If a service provider is a sole proprietor or partner owner(s) of an unincorporated business, they should provide a business card or the name of their website in addition to the Non-Employee Work Agreement and the Liability Hold-Harmless Agreement.

4. All service providers are required to enter into a written contract for the services they provide to the Town unless waived by the Selectboard.

5. All vendors must provide a completed W9 form prior to commencement of work for the Town.

6. In limited cases, sole source contractors who work off-site may be waived from the requirement of signing the Hold Harmless Agreement on the advice of the Town attorney.

NON-EMPLOYEE WORK AGREEMENT

Under 21 VSA § 601 (14) (F), sole proprietors and partner owners of an unincorporated business whose work: is distinct and separate from the municipality's work; who control the means and manner of the work performed; hold themselves out as in business for themselves; hold themselves out for work for the general public and do not perform work exclusively for or with another person; and are not treated by the municipality as an employee for purposes of income or employment taxation with regard to the work performed; are not considered workers or employees of the municipality. To be completed by Municipality:

- Work to be performed _____
- Written contract? (circle one) Yes No
- If yes, attach a copy of the contract.
- Beginning and end date of work: _____
- Could this work be considered a normal municipal function? _____
- Is this type of work also performed by a town employee? _____
- Do you have necessary equipment (owned, leased, rented, borrowed or shared) to perform this work?

To be completed by Contractor:

Undersigned, sole proprietor, or partner owner of an unincorporated business, of _____ (name of business), of _____ (business address), hereby certify that I am aware of my right to purchase Workers' Compensation insurance and have elected to purchase Workers' Compensation coverage as described below, or not to purchase Workers' Compensation insurance coverage: (Check one)

☐ Undersigned, hereby attests I have procured Workers Compensation Insurance Coverage from: Carrier: _____ Effective Dates: _____ to _____ Limits of Liability: _____
(Attach a valid Certificate of Insurance)

☐ Undersigned, hereby attests that I am a sole proprietor, or partner owner of an unincorporated business, and as such am not considered to be a worker or employee under the provisions of 21 VSA § 601 (14).

I affirm that:

- I am not a worker or employee of Town of Monkton.
- I am working independently;
- I have no employees; and
- I have not contracted with other independent contractors;
- I understand that I have the right to purchase workers compensation insurance, and I have elected not to purchase workers compensation insurance coverage.

Date: _____ Print Name: _____ Sign Name: _____

Municipal Representative Signature: _____

LIABILITY HOLD-HARMLESS AGREEMENT

For use with Sole Proprietors and Owner Partners of Unincorporated Businesses In consideration of the agreement of Town of Monkton to engage my company and me to perform certain services for the Municipality, my company and I agree, and for myself/ourselves and my/our heirs, executors and administrators agree to indemnify, defend and hold forever harmless Town of Monkton, its officers, agents and employees from and against any and all claims, demands, liabilities, actions, judgments, settlements, damages, costs and expenses (including attorney's fees and disbursements) for injury to or death of any person, including myself, or damage to property arising out of or resulting from any material, product, equipment, vehicle or service supplied by the company or by me, or the agents, servants or employees of either, or from any action or failure to act on the part of myself or the company, or the agents, servants or employees of either, while performing services for, at the behest of, under contract with or on the premises of Town of Monkton.

☐ Valid, current, certificate of insurance is attached.

Date: _____ Print Name: _____

Witness: _____ Sign Name: _____

Company Name: _____

