

PURCHASING/PROCUREMENT POLICY FOR THE TOWN OF ALTA

Adopted April 14, 2021

ARTICLE I GENERAL PROVISIONS

A) **Scope and General Provisions:**

- 1) The purpose of these rules is to ensure that purchases made and services contracted are in the best interest of the public and acquired in a cost effective manner.
- 2) No purchase shall be made and no encumbrance shall be incurred unless funds sufficient to cover the purchase or encumbrance have been budgeted and are available within the approved budget.
- 3) The Town reserves the right to reject or cancel any and all invitation for bids, request for proposals, or other solicitations, in whole or in part. No bidder shall have any right, legal or equitable, or claim against the Town for any expense or cost incurred by them in the preparation or submission of their bid or proposal, which is rejected, regardless of the reasons for the rejection.
- 4) The Town expressly reserves the right to waive minor or slight irregularities in a bid or proposal which in the judgment of the Purchasing Agent are in the best interest of the Town. The decision of the Purchasing Agent on irregularities on a bid or proposal shall be final and conclusive and shall not create any right to bidders. Further, the Town reserves the right to amend, modify or waive any provision in a request for proposal or invitation for bids.
- 5) The following contract clauses should be made part of any contract with the Town: the unilateral right of the Town to order, in writing, change in the work within the scope of the contract and changes in the time of performance of the contract; variations occurring between estimated quantities of work in a contract and actual quantities; and suspension of work ordered by the Town.
- 6) This policy shall not prevent the Town from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.
- 7) When procurement involves the expenditure of federal assistance funds, the Town shall comply with applicable federal law and regulations.

B) **Definitions**

- 1) "Change order" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.
- 2) "Contract" means any Town agreement for procurement of supplies, services, or construction.
- 3) "Invitation for Bids" or "Sealed or Competitive Bids" means all documents, whether attached or incorporated by reference, used for soliciting of competitive sealed bids for procurement of construction type services, supplies and equipment.
- 4) "Request for Proposals" (RFP) means solicitation of proposals for procurement of services, supplies and equipment where cost is not the sole factor.

ARTICLE 2
THE PURCHASING AGENT AND PURCHASES AND SERVICES GENERALLY

- A) The Town Clerk is hereby appointed and designated as the Town of Alta purchasing agent. The Purchasing Agent may designate another staff member to undertake all or some of the duties of the Purchasing Agent set forth herein or appointed to him or her. The Purchasing Agent shall be responsible to make procurements, solicit bids and proposals, enter into and administer contracts, and make written determinations for the Town.
- B) When the Purchasing Agent determines it to be most advantageous to the Town, an Invitation to Bid can be used in lieu of a RFP, and a RFP may be used in lieu of a request for informal quotes or any other process which is more formal than required.
- C) Town of Alta purchases are not subject to sales tax. For vendors requiring documentation of tax-exempt status, a TC-712G Exemption Certificate for Governments and Schools may be obtained from the Town Clerk's Office.
- D) Ongoing Service Contracts are contracts that renew annually for services such as: cleaning services, alarm systems, snow removal, and furnace maintenance etc. Ongoing service contract renewals will not last more than a five-year span. Following the conclusion of a five-year term, contracts exceeding a total of \$25,000 per year (\$125,000 over five years) will solicit proposals using a Request for Proposals.

ARTICLE 3
EXCEPTIONS TO PURCHASING POLICY

- A) **Purchases made through the cooperative purchasing contracts** administered by the State Division of Purchasing and General Services pursuant to Utah Code 63G-6a-2105, or other governmental entity which has applied its purchasing and procurement policies.
- B) **Purchases made from a single-source provider.** The Purchasing Agent may procure from a sole source when after conducting a good faith review of available sources, determines that no other sources are reasonably available, or that competition would be unlikely to produce other acceptable offers. The Purchasing Agent shall put that determination in writing for the file.
- C) **Purchases required during an emergency**, i.e., an eminent threat to the public's health, welfare, or safety. However, as much competition as practical should be obtained; and, such purchases should be limited to amounts necessary to the resolution of the emergency.
- D) **Professional services.** Contracts for Professional Services are usually contracts for services performed by an independent contractor, in a professional capacity, who produces a service predominately of an intangible nature. These include, but are not limited to auditing, banking, insurance, legal, engineering, accountant, architectural consultant, artist, appraiser and similar professional consultation. Professional services may be procured as negotiated based on demonstrated competence and qualification and at fair and reasonable price. Procurement of professional services must be approved by the Purchasing Agent.

E) **Payment of routine expenditures.** The Purchasing Agent is authorized to approve payments for routine expenditures such as utility bills, internet/telecommunication bills, leases, and payroll related expenses, provided that such expenditures are referenced in the then approved budget. No quotes or request for proposals are needed.

F) **Auction, Closeout, Bankruptcy Sales:** The Purchasing Agent may determine that supplies, materials, or equipment can be purchased at any public auction, closeout sale, bankruptcy sale or similar sale and that it will be at below the market cost in the community.

F) **Specialized Contracts** which are not adapted to award by competitive bidding or proposals, such as 1) contracts for additions to, repairs and maintenance of equipment owned by the Town, which may be more efficiently done by a certain person or firm; 2) contracts for a particular brand of equipment or product which is uniquely suited to the town's needs by reason of training of its personnel or compatibility with existing equipment or to assure standardization or a continuation of supplies or services, or 3) contracts for the purchase of used equipment or items that are unique as to quality, condition and price.

ARTICLE 4

PURCHASES NOT REQUIRING SEALED/COMPETITIVE BIDS INCLUDING RFPs (price is not the sole determining factor)

A) The request for proposal process should be used, as determined by the Purchasing Agent, when there may be a need for price and service negotiations, when the skill and expertise of the offer needs to be evaluated, when costs are secondary to the product or service sought and when subjective elements as quality, warranty, experience, etc. are more important than awarding to the lowest cost vendor who meets minimum requirements.

B) **Purchases costing less than \$5,000** in total, shall not require bids of any type. (Purchases shall not be artificially divided so as to constitute a small purchase under this section.)

C) **Purchases costing more than \$5,000 but less than \$25,000** in total, shall require, at a minimum, two informal bids (price quotations) by phone, in person, email, or other electronic means. Email is generally preferred. Alternatively, but not required, a Request for Proposal can be performed.

D) **Purchases over \$25,000**

1) All procurements of services and goods in an amount over \$25,000 shall be solicited through a Request for Proposals.

2) All procurements of services and goods in an amount over \$25,000 shall be ratified by the Town Council in an open meeting. Additionally, accumulated "Change Orders" outside the original budget amount which would overall increase a previously council approved contract by \$25,000 for contracts of \$250,000 or less or more than 10% for contracts over \$250,000 shall be granted by Town Council in an open meeting.

3) Notwithstanding 1) and 2) above, in the event the Town Council, as part of its review and approval of the town budget, has approved a specific line-item appropriation for the supplies or services, including the purchase of capital assets or “equipment type” items, the contract may be awarded by the Purchasing Agent, regardless of amount, as long as the approved line-item appropriation is not exceeded.

E) Use of Requests for Proposals.

1) It is recommended, but not required, that public notice of the Request for Proposal be given a minimum 5 calendar days prior to the date set forth therein for closing the request. The public notice shall include posting on the Town of Alta website. The public notice may include posting on the State of Utah Division of Purchasing Courtesy Posting Services.

2) Award shall be made to the person whose proposal is determined, to be the most advantageous to the Town, taking into consideration price and the evaluation factors set forth in the request for proposals. Price is not the sole determining factor.

ARTICLE 5

INVITATION FOR BIDS OR SEALED OR COMPETITIVE BIDS

A) Recommended use of Invitations for Bids.

1) An Invitation for Bids is appropriate to use when cost is the major factor in determining the award of a procurement and all vendors meet minimum requirements.

2) An Invitation for Bids may be used when determined by the Purchasing Agent to be in best interest of the Town when the Town is capable of specifically defining the scope of work for which the services, supplies and equipment are required or when the Town is capable of establishing precise specifications defining the commodity required.

3) If the Purchasing Agent determines an Invitation for Bids is not in the best interest of the Town, the requirements in Article 4 above shall be followed.

B) Mandatory sealed/competitive bids.

1) The Town shall follow the procedures contained in Utah Code 11-39-101 et seq. for the contracts for the construction of building improvements, or public works projects, specifically: a) for building improvements (the construction or repair of a public building or structure) for the year 2003, \$40,000; b) for public works projects (the construction of a park or recreational facility; or a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or flood control but does not include: the replacement or repair of existing infrastructure on private property), for the year 2003, \$125,000. For both building improvements and public works projects, for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the CPI during the previous calendar year. c) Follow the requirements for noticing such bids in Utah Code 11-39-103. d) Contracts for the construction of building improvements, or public works projects shall follow the below procedures, unless the requirements for 11-39-101 et seq. are stricter, in which case the stricter requirements shall apply.

B) Invitation to Bid Procedures. Where formal bidding is utilized, the lowest responsive and responsible bidder shall be determined through use of the following procedures:

1) The invitation shall include a description and all contractual terms and conditions applicable to the procurement.

2) Public notice of the invitation for bids shall be given at least 5 days prior to the date set forth therein for the opening of bids. The notice may include posting on the Town of Alta website and the State of Utah Division of Purchasing Courtesy Posting Services.

3) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitations for bids. The amount of each bid and any other relevant information, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection.

4) The Contract shall be awarded to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In determining “lowest responsible bidder”, in addition to price, the town council shall consider:

1. The quality and availability of supplies or services offered;
2. The ability, capacity and skill of the bidder to perform the contract or provide the supplies, personnel or service required;
3. Whether the bidder can perform the contract or provide the supplies promptly, or within the time specified, without delay or interference;
4. The sufficiency of the bidder's financial resources and the effect thereof on his ability to perform the contract or provide the supplies or services;
5. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
6. The quality of the bidder's performance or breach of contractual obligations with public and private agencies on previous orders or contracts for the town or others;
7. Litigation by or against the bidder, either pending or threatened, where claim is made that the bidder provided or furnished materially defective workmanship or materials to the town, or failed to substantially comply with bid specifications or contract terms and conditions;
8. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
9. The ability of the bidder to provide future maintenance and service, where such maintenance and service is essential;
10. Possession or ability to obtain all necessary town and state licenses either at the time of bid or before doing business with the town.

5) Pre-qualification of Bidders for invitation to bid: The Town may require pre-qualification of bidders. Upon establishment of the applicant's qualifications, the Purchasing Agent shall issue a qualification statement. The statement shall inform the applicant of the project for which the qualification is valid, as well as any other conditions that may be imposed on the qualification. If the Purchasing Agent does not qualify an applicant, or later is no longer qualified, written notice to the applicant is required, stating the reasons the prequalification was denied, and informing the applicant of the right to appeal the decision within five business days after receipt of the notice. Appeals shall be made to the Town Council.

C) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid

opening no changes in bid prices or other provisions of bids prejudicial to the interest of the Town of fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a written determination made by the Purchasing Agent.

D) Change orders may be approved by the Purchase Agent provided the total contract price, including the change order, is within the original budget amount.

E) Bonds. The Purchasing Agent shall have the authority to require a bid bond or a performance bond in such amount as it shall find necessary to protect the best interests of the town. The form and amount of said bond shall be described in the notice inviting bids.

ARTICLE 6 APPEALS

A) Protests to the bidding process shall be submitted to the Purchasing Agent in writing within five business days after the aggrieved person knew or should have known that it was the Town's intent to award the bid or contract. Protests in regard to specifications of an invitation for bids or request for proposals shall be submitted, in writing, prior to opening of bids or proposals even if it is shorter than the five business days. Protests must specifically state the facts which constitute error in the award and the desired remedy.

B) The purchasing agent shall promptly issue a written decision regarding the protest, if it is not settled by a mutual agreement. The decision shall state the reasons for the action taken and inform the protestor, contractor, or prospective contractor of the right to appeal to the Town Council in writing within 5 days.

C) The Town Council shall be the final appeal authority.

ARTICLE 7 ETHICS IN PUBLIC CONTRACTING

A) No person involved in making procurement decisions shall have personal investments in any business entity which will create a substantial conflict between their private interests and their public duties; receive any compensation or gift from any bidder or proposer; or have any other conflict of interest.

B) All persons making procurement decisions are responsible for reviewing and complying with Utah Code 67-16, Utah Public Officers' and Employees' Ethics Act.