

Town of Effingham Procurement Ordinance

SECTION I. – PURPOSE

The purpose of this Procurement Ordinance is to obtain goods and services for the Town of Effingham at the lowest possible price consistent with the quality needed; to exercise financial control over purchases and to clearly define authority for the purchasing function. Also, to allow fair and equal opportunity among qualified suppliers and to provide for increased public confidence and transparency in the procedures followed in public purchasing/procurement. This ordinance is adopted in accordance with NH RSA 31:39 as it relates to the management of the Town's prudential affairs and their authority over expenditures.

SECTION II – COMPETITIVE BIDDING

Subject to the exceptions set forth below, all single or combined annual purchases of goods or services exceeding \$15,000, authorized by the Board of Selectmen and/or Town Meeting, shall be subject to the public procurement process detailed in this Ordinance.

1) **REQUEST FOR PROPOSALS:** Certain professional services, such as architectural and engineering services, construction, auditing, and legal services, among others, are more appropriately solicited through a Request for Proposals (RFP). This is due to the need to consider factors other than price, such as professional qualifications, previous experience in related projects, and review of support staff background.

When soliciting for RFP's the specifications must contain, at a minimum, the following information: scope of services to be performed; timing requirements; evaluation criteria; minimum qualifications of professional experience, and any security bonding which will be required. It must also contain information required by section 4: "Request for proposals RFP Specifications".

The Town shall solicit proposals from at least three (3) vendors/contractors (when available) able to provide the needed professional service. Selection should be made by utilizing the following criteria: proposal review; interview of individual(s); reference checks, including site visits if applicable; and price.

2) **BID SPECIFICATIONS:** The Department Head shall prepare specifications for bid items, and shall submit the final specifications to the Town Administrator for approval by the Board of Selectmen prior to solicitation. As a part of the specifications, the Department Head should always include the following minimum items or requirements:

- a) Bid name. Bid Submittal Deadline;
- b) Bidders must clearly identify the product or service on which they are bidding on all envelopes submitted.
- c) Bidders shall provide samples with the bid when applicable. All samples will be returned to the vendors after the bid process is complete.
- d) The terms of the contract, including effective dates, extension terms, termination clauses, and other applicable terminology.
- e) The party responsible for the freight and insurance charges (if applicable), as well as how damaged goods will be returned and the extent of guarantees.

- f) Where applicable, performance bonds will be required and shall always be required, as specified by RSA 447:16, for construction projects with a value greater than \$25,000.
- g) A statement, which reserves the Town’s right to reject any and all bids, negotiate any contracts and waive any informalities in the bid process.
- h) A statement of how the prospective contractor will be considered a responsible bidder for the purposes of this ordinance.
- i) A statement, which reserves the Town’s right to consider substitution of equivalent items and under what conditions. The specifications shall include a statement, which requires the bidder to submit documentation for all substitutions and exceptions.
- j) Where applicable, the Town will hold a bidders conference or site walk to acquaint the bidders with the project or service, and to address any special concerns, questions or request for exceptions that may arise.
- k) Minimum quantity and quality requirements. These requirements should be specific enough to ensure the desired level of quality, but also must be flexible enough to elicit multiple bids.
- l) The following non-collusion clause shall be part of every bid specification package. A bidder must sign this statement in order for the bid to be formally accepted by the Board of Selectmen.

“The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this section the word “person” means any natural person, joint venture, partnership, corporation or other business or legal entity.”

(Name of person signing bid)

(Date)

(Company)

3) **PUBLIC NOTICE:** The Town shall give notice of all bids/proposals using as many resources as possible. This will include, but will not be limited to, an advertisement in at least one newspaper of general circulation in the Town of Effingham, one newspaper of statewide circulation, postings in at least 2 public places (one of which must be the Municipal Office Building), the Town’s website, and when such notices are permitted the NHMA website. Also, when available, notices will be posted on industry related websites and publications. All solicitation notices must remain posted for a period of not less than thirty (30 days) prior to the designated date for opening of the bid/proposal.

Notification of the Requests for Proposals or Bids may also be made as follows:

- a) Letter/email solicitation mailed directly to qualified known providers;
- b) Individuals and firms interested in being informed of applicable competitive purchasing/contracting opportunities may contact the Town Administrator and be placed on file.

4) **REQUEST FOR PROPOSALS (RFP) SPECIFICATIONS:** The **RFP** shall include the following information:

- a) Time, date and manner in which the RFP must be delivered;
- b) address the RFP is to be delivered;

- c) date which the Board of Selectmen or designee will formally accept the proposals;
- d) a general description of the goods or service being solicited;
- e) any and all contractual terms and conditions applicable to the purchase/service;
- f) indicate where, when and how the RFP specifications may be obtained;
- g) indicate where and when RFP will be opened, and by whom;
- j) reserves the Town's right to reject any and all proposals, or to waive proposal requirements.

5) AVAILABILITY OF SPECIFICATIONS: The Town Administrator shall distribute copies of the specifications to those firms/vendors as listed if any, and/or firms who may request a copy. The Town reserves the right to charge for copies according to size and complexity (i.e. construction drawings, etc.)

6) STANDARD PROCEDURE FOR SUBMISSION OF BIDS OR PROPOSALS: The Selectmen's office staff shall receive all bids/proposals submitted up to the time specified in the Public Notice. All bids/proposals must be submitted in sealed envelopes, addressed to the Town of Effingham in care of the Board of Selectmen, and plainly marked with the name of the bid or proposal goods/ services/project name. All bids/proposals will be dated and time stamped by the Selectmen's Office. Any late submissions will be rejected. A bidder may correct, modify, or withdraw a bid by written notice received in the Selectmen's office before the time and date set for opening the bids/proposals. Submissions must be completed in accordance with the solicitation. Any other terms and conditions contained in the documentation submitted must not conflict with those in the solicitation. If a bidder chooses to use its own form or a letter to submit a bid, the bid will be considered only if the bidder explicitly, in written form, accepts all the terms and conditions of the invitation and acknowledges that the award of the bid/proposal would result in a binding contract under the terms and conditions of the solicitation.

7) BID OPENING: The Board of Selectmen or assigned designee will open all bids at the time and date specified in the public notice/solicitation. The public opening and reading of each bid shall be at the time specified and shall include at least the following:

- a) Name and address of firm/individual/vendor submitting proposal/bid;
- b) For lump sum contracts, the lump sum base price and the price for each alternative;
- c) For unit price contracts, the unit price for each item and the total, if stated; and
- d) The nature and the amount of security furnished with the bid, if required by the specifications.

The names and quoted pricing for all submissions shall be listed in the recorded minutes of the next available Selectmen's meeting, and made available for public inspection. The Board of Selectmen may authorize a designee to open the bids. The Town Administrator shall notify all bidders of any changes in the time and/or date of the opening of the bids/proposals.

8) BID CORRECTIONS: After the bid opening, the bidder may not amend, correct, modify, or change documentation in any fashion, which would be contradictory to the interests of the Town of Effingham, or fair competition. The Selectmen or their designee may waive minor informalities, or allow the bidder to make corrections, as long as the intent of the bid/proposal is not disturbed.

9) STANDARD PROCEDURE FOR AWARD: The Department Head, in consultation with the Selectmen and others as needed, shall review bids which comply with the given specifications. The Board of Selectmen reserves

the right, at its sole discretion, to reject any and all bids, wholly or in part and to waive any minor informalities or any irregularities therein. The Board of Selectmen may formally vote to accept any bid or proposal, even though it may not be the lowest offered, and may call for another round of bidding, if necessary.

The Town Administrator shall, in accordance with the vote of the Selectmen, be responsible for preparing a notice/letter of bid award which will be provided to the successful contractor/vendor as well as all other parties who submitted bids/proposals. The minutes of the meeting at which the selection is made shall indicate the contractor/vendor awarded and the factors upon which the selection was made.

- 10) **CONTRACTOR QUALIFICATIONS:** To be determined responsible, a prospective contractor must:
- a) have adequate financial resources and insurance requirements to meet the specifications of the contract, or the ability to obtain them;
 - b) be able to comply with the required delivery or performance schedules;
 - c) have a satisfactory performance record;
 - d) have a proven record of integrity and business ethics;
 - e) have the necessary organization, experience, technical skills, and support staff;
 - f) have the necessary production, construction, and repair equipment and parts required to fulfill the contract requirements;
 - g) provide at least three professional references for similar goods or services and contact information for same;
 - h) accept that the nature and size of the vendor/contractor will be considered in the overall evaluation;
 - i) accept that any other factors that the Board of Selectmen determines are relevant and appropriate in connection with a given project or service.

SECTION III: MISCELLANEOUS PROVISIONS

1) **SOLE SOURCE PROPOSALS/BIDS:** The Town of Effingham will not entertain the solicitation of a single source vendor for supplies and/or services. The Town will consider a vendor if they are the only submission, provided that the procedural steps required by this ordinance has been followed and documented by the Town's soliciting authority. If specification changes are made prior to the close of the Bidding/RFP process, the specifications shall be amended and notice shall be sent to any vendor/contractor who already submitted a bid/proposal, and a new bid process shall be initiated.

2) **EMERGENCY PURCHASES:** In case of an emergency, the Board of Selectmen may award contracts and make purchases for the purpose of meeting a public emergency without complying with the bid process. A Department Head may make an emergency purchase only if the normal operations of the Department are in jeopardy and the Board of Selectmen have been notified. This shall generally mean or relate to emergency repairs to equipment or facilities which must be kept operating to protect the health and/or safety of persons, or property. Even in emergencies, however, an attempt shall be made to get at least three (3) quotes by telephone, e-mail or fax. In addition, the emergency expenditure shall be limited to the purchase of those goods or services needed to prevent the immediate harm. Any additional goods or services required to remedy the situation or prevent future

harm shall be subject to the rules of the Ordinance. For purposes of this paragraph only, the Board of Selectmen only may waive the competitive procurement provisions of these Policies. This waiver shall only be considered when there exists a special emergency involving the health and safety of the people or their property.

3) **BLANKET/RECURRING PURCHASES:** If a newly proposed purchase/service is anticipated to exceed \$15,000 during any fiscal year, the process called for in the Ordinance shall be initiated and shall specify the recurring nature of the purchase/service. Once a bid has been accepted, all future purchases within that contract may be made from that vendor/contractor without necessity of additional bidding, until such time as the Board of Selectmen vote to initiate a new bid/proposal process or after a five year period whichever is sooner. Examples of this situation would include the Town's use of contracted assessing services, auditing services, solid waste disposal, and insurance coverage.

4) **EXCEPTIONS:** Certain provisions of this Ordinance may also be waived by the Board of Selectmen under the following circumstances:

- a) Whenever New Hampshire State bid pricing is available for the product or service. Other State bid lists may also be consulted;
- b) There is lack of adequate time to secure the necessary quotes or pricing information (see emergency purchases above);
- c) There is an acceptable vendor on file with a proven history who has provided the lowest price quoted or bid, for a similar product or service;
- d) Police special investigative costs where disclosure may jeopardize an investigation;
- e) Maintenance contracts with manufacturers of equipment or software purchased;
- f) Where the Town decides to contract with non-profit organizations for health, welfare, social or recreational services to the Town.

5) **CONFLICTS OF INTEREST:** Under no circumstances may any Town official, employee, Town committee member or Town board member use a Town of Effingham account membership, account vendor number, purchase order number or any other method of making a purchase for personal use under the name of the Town of Effingham. Reimbursement arrangements are not allowed under this policy.

It shall be unethical for any Town official or employee involved in making procurement decisions to have personal investments, either directly or indirectly, in any business entity that will create a substantial conflict between their private interests and their public duties.

It shall be unethical for any person to offer, give, or agree to give any Town of Effingham official or employee, or for any Town of Effingham official or employee to solicit, demand, accept, or agree to accept from any vendor or business, a gift or gratuity in any amount in connection with any decision, approval, disapproval, or recommendation concerning a solicitation.

6) **LOCAL ADVANTAGE:** The Town of Effingham will make every effort to purchase from businesses located within Carroll County if the purchase fits into the category of "best overall value." It must be noted that The Town of Effingham employees and elected officials have a responsibility to the taxpayers of the Town to ensure that bids and proposals are awarded to vendors/contractors offering their products or services at the "best overall value" to the Town.