

PROCUREMENT ORDINANCE

DIVISION 1. - GENERALLY

Sec. 1. - Purpose and application; requirement of good faith.

(a) *Purpose.*

(1) *Purpose and policies.* The underlying purpose and policies of this article are to manage the procurement process in accordance with the law; to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity and to best meet the needs of the Town of Chelsea through continuous improvement of purchasing systems and procedures.

(b) *Application.* The Town's Purchasing Ordinance applies to contracts for procurement of goods, supplies, services, and construction entered into by the Town after the effective date of this article. It shall apply to every expenditure of public funds by a Town agency for public purchasing irrespective of its source, except as otherwise provided by the federal or state law, federal or state regulation, Town of Chelsea Ordinance, or administrative policy. When the procurement involves the expenditure of state or federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory state and/or federal law. Nothing in this article shall prevent the Town from complying with the terms and conditions of any grant, gift, bequest, or co-operative purchasing agreement that is otherwise consistent with law.

(c) *Requirement of good faith.* This article requires all parties involved in the procurement, negotiation, performance, or administration of Town contracts to act in good faith.

Sec. 2. - Severability.

If any provision of this article or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this article, which can be given effect without the invalid provision, or application, and to this end the provisions of this article are declared to be severable.

Sec. 3. - Definitions.

(a) *Singular-plural and gender rules.*

(1) *Singular-plural.* Words in the singular number include the plural, and those in the plural include the singular.

(2) *Gender.* Words of a particular gender include any gender and the neuter, and when the senses indicate, words of the neuter gender may refer to any gender.

(b) *Definitions.* The word(s) defined in this section shall have the meanings set forth below whenever they appear in this article.

Architect—Engineer and land surveying services. Those professional services within the practice of architecture, professional engineering, structural engineering or land surveying, as defined by State of Maine Professional Services Selection Act.

Bid security. Is a guarantee that the bidder will enter into a contract if it is offered within the specified period of time; failure to do so will result in forfeiture of bid security.

Brand name or equal specification. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other salient characteristics needed to meet Town requirements, and which provides for the submission of equivalent products.

Business. Any corporation, partnership, individual, sole proprietorship, joint venture, or any other private legal entity.

Change order. A purchaser's written authorization to the Contractor to modify or change an existing purchase order or contract; these changes generally must be within the scope of the contract.

Confidential information. Any information which is available to an employee only because of the employee status as an employee of the Town and which is not a matter of public knowledge or available to the public on request.

Construction. The process of building, altering, repairing, improving, or demolishing any structure or building or other improvements of any kind to any real property or any repairs or maintenance to roads or right of ways maintained by the Town.

Contract. All types of Town agreements regardless of what they may be called, for the procurement of goods, services or construction, for example, payment vouchers, purchase orders, maintenance contracts, service contracts, systems contract, oral agreements, etc.

Contract renewal. A continuation for an additional period under the original terms and conditions, where the renewal clause is included in the bid document. If the bid document does not include the terms and conditions of a renewal, any continuation of the contract is considered a new contract, which must be re-bid.

Contractor. Any person or entity who is a party or beneficiary of a contract with the Town or through a using agency thereof.

Design/build services. A combination of professional and general services as defined under this chapter, to be performed by one contractor under competitive proposal process with the approval of the Purchasing Officer.

Emergency procurement. An emergency situation shall be defined as an imminent disruption of essential operations or conditions adversely affecting the safety, health or security of persons or property, where it is unfeasible to remedy such disruption or conditions through the use of normal competitive bidding procedures.

Employee. Individuals including elected and appointed officials providing services for the Town and drawing a salary from the Town.

Goods. All tangible maintenance, repairs, and operation supplies, physical computer software and equipment necessary to sustain day-to-day Town operations.

Invitation to bid. All documents whether attached or incorporated by reference, utilized for soliciting sealed bids.

Local vendor. A vendor whose principal place of business is located in the Town.

Multi-year contracts. Procurement contracts extending more than one year.

Committee. A Standing or Ad-Hoc Committee established by with specific using agency jurisdiction and responsibilities.

Person. Any individual or group of individuals, business, union, firm, corporation, trustee, partnership association, joint venture, committee, or other entity.

Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any goods, services, or construction. Includes all functions that pertain to the obtaining of any goods or services, or construction, including descriptions of requirements, selection and solicitation of sources, preparation, and award of contract, and all phases of contract administration.

Professional services. The service of a person(s) possessing a high degree of professional skill where the judgment, artistic or subjective talent, ability, experiences,

qualifications and fitness of the provider(s) play an important part in the selection and primary reason for the service provided.

Public procurement unit. The State of Maine, any county, city, town and any other subdivision of the state, or public agency of any such subdivision, public authority, education, health or other institution, any agency of the United States, and to the extent provided by law, any other entity which expends public funds for the procurement of goods, services, and construction.

Purchase order. A contract for the purchase of goods, services, or construction.

Purchase requisition. An internal document details goods, materials or services for a specific job.

Request for proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible bidder or offeror. A person who has the capability in all respects to perform fully the contract requirements, and the experience, personnel, integrity, reliability, facilities capacity, equipment, acceptable past performance and credit which will assure good faith performance.

Responsive bidder. A person who has submitted a bid, which conforms in all material, respects to the requirements set forth in the invitation to bid.

Services. The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This definition shall not apply to employment agreements, collective bargaining agreements or to the definition of "professional services" as provided in this section and items paid by direct payment forms, payment vouchers and grant payment forms.

Specification. Any description of the physical or functional characteristics or the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery.

String purchasing or stacking. For purposes of this article, splitting, stacking or stringing purchases is the practice of issuing multiple purchase orders, procurement card transactions, or requisitions for purchasing like items or services, with the willful intent to circumvent the purchasing policy. Splitting or stringing purchases will be dealt with as an impropriety.

Supplies. All consumables or property, including but not limited to equipment, materials, printing and leases for real property, excluding land or a permanent interest in land.

Unauthorized purchases. An unauthorized purchase occurs when a person who has not been given such authority charges the materials, services, or any expense to the Town. This includes ordering materials without an approved purchase order. The individual making an unauthorized purchase may incur a personal obligation to the vendor or the Town for the expense incurred even though the materials or services are used for Town business. Except as herein provided, it shall be unlawful for any Town officer or officers to order to purchase any supplies, services and construction within the purview of this article other than through the Purchasing Officers, and any purchase ordered or contract made contrary to the provisions hereof shall not be approved by the Town officials, and the Town of Chelsea shall not be bound thereby.

Used equipment. Equipment that:

- (1) Has been in service for at least one-half (½) its commercially reasonable life, or if life is less than twenty-four (24) months, is at least one (1) year old; or
- (2) Is a floor or demonstration model that is offered at a price at least twenty-five (25%) percent below current market price; or
- (3) Is otherwise determined on a case-by-case basis to be a bona fide used item.

DIVISION 2. - SCOPE OF AUTHORITY

The responsibility of the Purchasing Officer regarding procurement shall be as follows:

- (1) Development of specifications for supplies, services or construction shall be the responsibility of the Purchasing Agent.
- (2) Procuring the highest quality item(s) for a specified use at the lowest possible expense is required.
- (3) Local purchasing is encouraged where competitive market prices exist and is required unless non-local purchasing is more cost effective. The following factors shall be considered to determine cost effectiveness:
 - a. Price;
 - b. Comparable quality;
 - c. Cost/time to secure prices;
 - d. Shipping and handling cost;

- e. Convenience of follow-up service;
 - f. Time to secure the supply, item or service.
- (5) Inspection of incoming materials or services shall be performed for compliance with specifications.
- (6) Unless otherwise provided, the single purchase of a supply or construction item in an amount estimated at five thousand dollars (\$5,000.00) or above shall be made only by written contract award through the formal bidding procedure. No supply, service, or construction generally purchased in the whole shall be purchased as a sum of the parts for the purpose of avoiding the requirement to solicit bids. A single purchase of services in an amount estimated at five thousand dollars (\$5,000.00) or more shall be made only by written contract award through the appropriate proposal procedure. Sole source purchases and emergency purchases shall be exceptions to these rules.
- (7) The Board of Selectmen retains the right to enter into contracts for professional services, such as legal or auditing, without otherwise complying with the requirements of this Ordinance as long as such actions are taken in the best interest of the Town.

Sec. 4. - Appointment of Purchasing Officer.

The Town Manager or other designee appointed by the Board of Selectmen shall be the Purchasing Officer for the Town. The Fire Chief shall be the Purchasing Officer for the Fire Department and shall fully comply with this Ordinance.

Sec. 5. - Authority and duties of Purchasing Officer.

The authority and duties of the Purchasing Officer shall be as follows:

- (1) Except as may be otherwise provided, the Purchasing Officer shall be responsible for the procurement of supplies, services and construction in accordance with this article, as well as the management and disposal of supplies.
- (2) In accordance with this article, and in the best interests of the Town, the Purchasing Officer shall:
- a. Procure or supervise the procurement of all supplies, goods, services and construction needed by the Town;
 - b. Exercise direct supervision over the Town's central stores and general supervision over all other inventories belonging to the Town;

- c. Sell, trade or otherwise dispose of surplus supplies having more than de minimus value belonging to the Town;

DIVISION 3. - BID SECURITY/BONDING/REQUIREMENTS

Sec. 6. - Bid security.

(a) In the discretion of the Purchasing Office, bid security may be required for all competitive sealed bidding for construction contracts when the price is estimated by the designated official for construction contracting management to exceed twenty-five thousand dollars (\$25,000.00). Bid security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Director of Finance and Administration.

(b) Bid security shall be in an amount equal to at least five (5) percent of the amount of the bid.

(c) When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply only in a non-substantial manner with the security requirements.

(d) If a bidder is permitted to withdraw a bid before award as provided in section 2-293(f), no action shall be taken against the bidder or the bid security.

Sec. 7. - Contract performance and payment bonds.

(a) When a construction contract is awarded in excess of five thousand dollars (\$5,000.00), the following bonds or security shall be delivered to the Town and shall become binding on the parties upon the execution of the contract:

- (1) A performance bond executed by a surety company authorized to do business in Maine and who is listed on the U.S. Treasury Department list of acceptable sureties as published in the department circular 570 or otherwise secured in a manner satisfactory to the Town in an amount equal to one hundred (100) percent of the price specified in the contract; and
- (2) A payment bond executed by a surety company authorized to do business in the state of Maine and who is listed on the U.S. Treasury Department list of acceptable sureties as published in the department circular 570 or otherwise secured in a manner satisfactory to the Town for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided

for in the contract. The bond shall be in an amount equal to one hundred (100) percent of the price specified in the contract.

(b) The Purchasing Officer may reduce the amount of performance and payment bonds to fifty (50) percent of the contract price for each bond when a written determination is made that it is in the best interests of the Town to do so.

(c) Nothing in this section shall be construed to limit the authority of the Town to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in subsection (a) of this section. Nor shall this section be construed to limit the authority of the Town to require warranties or guarantees against defects where circumstances recommend them.

Sec. 8. - Insurance requirements.

For all contracts, the contractor and all sub-contractors shall be required to maintain adequate insurance coverage for the duration of the contract. The Town shall determine the types and amounts of coverage that shall be required. The contractor shall have the Town named as an additional insured as its interest may appear and furnish the Town with satisfactory evidence of said insurance.

Sec. 9. – Indemnification.

For all construction contracts involving an award in excess of five thousand dollars (\$5,000.00), the contractor shall agree to indemnify and hold harmless the Town for any liabilities to third parties or state or federal authorities arising from any actions or omissions resulting from contractor's performance of the contract.

Sec. 10. - Bid and/or request for proposal document addenda and questions.

Once the bid/request for proposal document has been issued, all questions regarding this document shall be submitted in writing to the Purchasing Officer. Any and all addenda shall be issued by the Purchasing Officer pursuant to any alterations required in the bid document.

Sec. 11. Purchases less than \$5,000.

(a) *Condition of use.* These purchases are limited in frequency related to individual commodities and services. Contract requirements shall not be artificially divided so as to constitute a small procurement or evade the competitive procurement requirements for amounts in excess of five thousand dollars (\$5,000.00) under this section.

(b) *Minimum requirements.* Procurements less than five thousand (\$5,000.00) insofar as it is practical for small purchases, no less than three (3) businesses shall be solicited to submit quotations. Quotations may be accepted by

telephone. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded with purchase orders and maintained as a public record.

(c) *Minimum quotation requirements.* For purchases less than five thousand dollars (\$5,000.00) and more than one thousand dollars (\$1,000.00), the Purchasing Officer shall obtain quotations/proposals (these may be in written form, fax or e-mail) from at least three (3) vendors.

(d) *Evaluation factors.* Evaluation factors which may justify an award to a vendor who has not provided the lowest quotation include; but are not limited to, delivery requirements, quantity requirements, quality and past vendor performance. Whenever it is determined that it is in the best interest to award a purchase contract to a vendor who did not submit the lowest acceptable quotation, the reason for the determination shall be indicated in a decision memo and retained with the contract. The decision memo documents and determines the appropriateness of the requested procurement process and approvals.

(e) *Award.* Except as provided below award shall be made to the vendor offering the lowest responsive and responsible quote who meets the specifications. Adequate records to document the competition solicited and award determination made shall be retained with the contract.

(f) *Sole source.* Circumstances may exist where the Purchasing Officer determines that it is not feasible to secure three (3) quotations. In other situations, the Purchasing Officer may determine that it is in the best interests of the Town to consider only one supplier who has previous expertise relative to procurement. Whenever the Town determines that it is not feasible, or is not in the Town's best interest to satisfy the minimum quotation requirements of subsection (c) the reason for this determination shall be indicated in writing by the Purchasing Officer in a decision memo and retained with the contract.

Sec. 11. - Purchases over \$5,000.00—Competitive sealed bidding.

(a) *Conditions of use.* All purchases by the Town (excluding professional services) where the value exceeds five thousand dollars (\$5,000.00) (except where allowed by statute) shall be awarded by competitively sealed bidding except as otherwise provided or as provided by law. String purchasing is forbidden and purchases shall not be artificially divided for purposes of evading the competitive sealed bidding requirement.

(b) *Invitation for bids.* An invitation for bids shall be issued and include specifications or general descriptions, and material non-negotiable contractual terms and conditions applicable to the procurement.

(c) *Public notice.* Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth therein for the submittal and opening of bids.

(d) *Bidder's conference.* The Town, in its sole discretion, may hold a bidder's conference. The purpose of the bidder's conference may be to: answer potential suppliers' questions and to ensure a clear understanding of the requirements in each case. The answers provided at the bidders' conference must be formally documented by the Purchasing Officer and distributed and included as part of the solicitation documents prior to the submission of offer deadlines.

(e) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, or such other relevant information as the purchasing officer deems appropriate, together with the name of each bidder shall be recorded.

(f) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this article. The Purchasing Officer, based on the requirements set forth in the invitation for bids shall evaluate bids for responsiveness. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bid shall set forth the evaluation criteria to be used. No criteria may be used or considered in the evaluations that are not set forth in the invitation for bid. Alternative bids may be considered and accepted only if they are specifically provided for in the invitation for bids and meet the evaluation criteria set forth.

(f) Correction or withdrawal of bids, cancellation of award.

(1) *Bids withdrawn prior to opening.* Bids may be withdrawn prior to the bid opening upon written request of the bidder and in accordance with the terms and conditions contained in the bid document.

(2) *Correcting bid totals.* After the bid opening, no changes in prices or other provisions shall be permitted, except to correct calculations, as stated in the terms and conditions contained in the bid document.

(3) *Clarifications.* The Purchasing Officer may obtain clarification from any bidder, after opening, deemed necessary to fully evaluate the bid.

(4) *Bid withdrawal after bid opening.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening or cancellation of awards or contracts based on such bid mistakes may be permitted

where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received in the office designated in the invitation for bids prior to the time set for the bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Town or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- a. The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- b. The bidder submits evidence, which clearly and convincingly demonstrates that a mistake was made. 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 Officer.

(g) *Lowest responsible bidder.* Bids shall be awarded to the lowest responsible bidder. In determining "lowest responsible bidder" in addition to price and compliance with all applicable bid specifications, the agent, where appropriate, shall consider:

- (1) The ability, capacity, and skill of the bidder to perform the bid or provide the service required.
- (2) Whether the bidder can perform the bid or provide the service promptly, or within the time specified, without delay or interference.
- (3) The character, integrity, reputation judgment, experience and efficiency of the bidder.
- (4) The quality of performance of previous bids.
- (5) The previous existing compliance by the bidder with the laws and ordinances relating to the bid.
- (6) The sufficiency of the financial resources and ability of the bidder to perform the bid.

- (7) The quality, availability, and adaptability of the supplies, or general services to the particular use required.
 - (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the bid.
 - (9) The number and scope of conditions attached to the bid.
 - (10) The agent demonstrating that the bid is not in the Town's best interest and does not promote the underlying purposes of this article may indicate such other factors as in writing.
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- (h) *Right of rejection.* The Town of Chelsea reserves the right to accept or reject any or all bids/proposals and to waive any non-material provisions of the bid.
 - (i) *Award.*
 - (j) The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid for a construction project exceeds available funds as certified by the Town and such bid does not exceed such funds by more than twenty (20) percent, the Purchasing Officer is authorized to negotiate an adjustment of the bid price and amendments to the specifications and contractual terms and conditions applicable to the construction project with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.
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- (2) When it is considered impractical to prepare initially a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of non-priced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

Sec. 12. - Purchases over \$5,000.00—Request for proposal.

- (a) *Condition for use.* In cases where the Town seeks to contract for a project or service whose goals, tasks or results are known, but for which the procedure

or method of accomplishing same either may not be specified or are otherwise undetermined, a contract may be entered into by use of the request for proposal procedure.

(b) *Request for proposal.* Proposals shall be solicited through the Purchasing Officer and shall include specifications or general descriptions, and material non-negotiable contractual terms and conditions applicable to the procurement. Persons engaged in providing the described professional services may submit statements of qualifications and expressions of interest in providing such professional services.

(c) *Public notice.* Adequate public notice of the request for proposal shall be given in the same manner as public notice for invitation for bids.

(d) *Evaluation criteria.* Criteria including the weight to be given to each factor must be developed for evaluation of the proposal prior to notice.

(e) *Receipt of sealed proposals.* Names of offerors will be acknowledged in the presence of one or more witnesses at the time and place designated in the public notice. Contents of the proposals shall not be disclosed to any of the competition or offerors during the negotiation process.

(f) *Discussions with responsible offeror and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with the responsible offerors who submitted proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to a successful understanding of and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revision may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) *Award.* Award shall be made to the offeror determined in writing by the Purchasing Officer to be best qualified based on evaluation factors set forth in the request for proposals, and negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offer or offerors, in the order of their respected qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation is determined to be fair and reasonable.

Sec. 13. - Purchases under and over \$5,000.00—Design/build services.

(a) *Services requiring formal competitive proposal process.* Purchases of special or professional services, as defined above which are anticipated to exceed five thousand dollars (\$5,000.00) or design/build services shall be made by a competitive

proposal process as described in item (1) of this section. The award of any contract for design/build services shall require the approval of the Purchasing Officer. Notwithstanding the requirements of this section, said purchases may be made by competitive bid if the selection of a provider can reasonably be based upon the lowest possible price.

(b) *Purchase requiring informal competitive proposal process.* Purchases of special or professional services, which are less than five thousand dollars (\$5,000.00) , shall be based upon a reasonable and documented attempt to solicit proposals.

- (1) Proposals shall be solicited from at least three (3) qualified or pre-qualified service providers. The refusal to submit a proposal from an otherwise valid provider shall qualify as a proposal. The process shall be documented in writing by the purchaser. If a single reasonable source exists for the service, this shall be documented in writing.
- (2) The soliciting of proposals may be waived for any critical emergency, as defined in this article, or for any of the reasons for waiving a proposal process. Said waivers shall require the approval of the Purchasing Officer.

Sec. 14. - Prequalification of bidders.

The Purchasing Officer may require a pre-qualification process for bidders, suppliers, or professionals (hereinafter collectively referred to as "bidder(s)"). The pre-qualification process shall require at a minimum that prospective bidders answer questions that are contained in a pre-qualification questionnaire. Notice of the pre-qualification requirement shall be given in the same manner as is required to receive bids or proposals and once pre-qualification notice is given additional notice shall not be required to receive the bids or proposals. Responses to the pre-qualification requirements shall be provided within the time frames designated and any written responses shall be provided in a sealed envelope under penalty of perjury.

The pre-qualification questionnaire shall include, but not be limited, to questions pertaining to the following criteria:

- (1) The familiarity and experience of the prospective bidder with the particular type of purchase or contract designated;
- (2) The sufficiency and availability of personnel, equipment, materials, and other facilities or resources of the prospective bidder to accomplish the designated work or provide the construction or contract supplies, materials, or reports and opinions.

- (3) The ability of the prospective bidder to provide required bonds and insurance, including indemnity.
- (4) The financial ability/condition of the prospective bidder to accomplish the work designated.
- (5) The experience of the prospective bidder to perform the designated work as well as the experience in performing similar work.
- (6) The safety record of the prospective bidder.
- (7) The record of the prospective bidder within the preceding five (5) years regarding claims, arbitration, mediation, or litigation filed by or against the prospective bidder regarding public or private construction contracts or other contracts where the prospective bidder provided services, supplies, materials, opinions or reports.
- (8) Such other information as is deemed appropriate for the particular purchase or contract.

The Purchasing Officer or designee shall apply a uniform rating system to the prospective bidders for each purchase or contract. Bidders that are deemed qualified shall be provided the opportunity to submit bids or proposals in the manner set forth in this chapter; no other bids are required to be sought, although the Town may solicit additional bids if in the exercise of its discretion, it determines it to be in the Town's best interests.

Sec. 15. - Sole source procurement.

A contract may be awarded where the Purchasing Officer determines that it is not feasible to secure bids. In other situations, the Purchasing Officer may determine that it is in the best interests of the Town to consider only one supplier who has previous expertise relative to procurement. Whenever the Purchasing Officer determines that it is not feasible, or is not in the Town's best interest to satisfy the minimum bid requirements, the reason for this determination shall be indicated in writing on a decision memo, where required, and retained with the contract. If over \$5,000 sole source procurement must be approved by the Board of Selectmen.

Sec. 16. - Emergency procurements.

Notwithstanding any other provisions of this article, the Purchasing Officer may make or authorize others to make emergency procurements of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances.

Sec. 17. - Cooperative joint purchasing authorized.

(a) The Purchasing Officer shall have the authority to join with other units of government in cooperative purchasing plans when the best interest of the Town would be served thereby. The requirements of formal and informal bidding shall not apply to such cooperative arrangements.

(b) Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts, which are made available to other public procurement units after having been bid by another public procurement unit where required.

(c) The Purchasing Officer shall have the authority to join with all other units in government including local, county, state and federal in cooperative purchasing plans when the best interest of the Town would be served thereby. The requirements of the formal and informal bidding shall not apply to such cooperative arrangements.

Sec. 18. - Cancellation of invitations for bids or requests for proposals.

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 as may be specified in the solicitation, when it is for good cause and in the best interests of the Town. The reasons therefore shall be made part of the contract file. Each solicitation issued by the Town shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interest of the Town. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

Sec. 19. - Maximum practicable competition.

All specifications shall be drafted to promote overall economy for the purposes intended and encourage competition in satisfying the Town's needs, and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including but not limited to, those prepared for the Town by architects, engineers, designers and draftsmen.

Sec. 20. - Exemptions.

Public utilities are not subject to the provisions of this article.

Sec. 21. - Grant programs and special circumstances.

(a) Under certain grant programs the Town acts as a third-party administrator of local, state, and federal funds and does not procure goods and services for the Town. The processing of a grant requisition is done to facilitate the method of payment and does not require any of the normal procurement procedures or approvals under this article.

(b) In any situation wherein federal or state grant funds re utilized to support a Town purchase of goods or services, and either a majority of the funding is provided by the federal or state government, or as a condition of such grant the Town is required to follow the grantor's procurement regulations, such grantor's procurement regulations may be followed in lieu of compliance with this chapter.

Sec. 22. - Negotiated purchases—Exemption for bidding procedure.

Where there has been competitive bidding either formal or informal but no bids were received or the Purchasing Officer rejected all bids because the bid prices were unreasonable, the Purchasing Officer may negotiate for purchases if it is determined:

- (1) That it is not feasible or practical to re-bid the purchase;
- (2) Each qualified and responsible supplier on the bidders' list has been notified of the Town's intention to negotiate and is given reasonable opportunity of negotiate, and;
- (3) The final negotiated price is the lowest negotiated price offered by any qualified and responsible supplier.

Sec. 23. - Set-off of property taxes owed toTown.

(a) The Town may, in its discretion, set-off or withhold any payment, or portion thereof due to any business enterprise pursuant to any contract or purchase order for the purchase of any supplies, material, equipment and services if any taxes levied by the Town against any property, both real and personal owned by such business enterprise are delinquent and have been so delinquent for a period of not less than one (1) year, provided, however, that no such amount withheld shall exceed the amount of tax, plus penalty, lien fees and interest, outstanding at the time of withholding.

(b) A statement that the Town shall have said right of set-off or withholding shall be included in all documents used for the purchase of goods and services, including but not limited to bid documents, requests for proposals, purchase orders and contracts. Any contractor or vendor signing a contract or executing a purchase order with the Town shall thereby authorize the Town to execute such set-off.

(c) Procedure.

- (1) Within one (1) month after the due date of the payment of real or personal taxes, the Tax Collector shall notify the Purchasing Officer of all property taxes delinquent for a period of one (1) year or more.
- (2) Any contractor or vendor shall have the opportunity to dispute the delinquency and/or to negotiate a reasonable and acceptable payment arrangement. The Purchasing Officer shall have the authority to make any such payment arrangement. The Purchasing Officer shall have the authority to withhold payment, pending resolution of such appeal.

Sec. 24. - Qualifications and duties—Responsibility of bidders and offerors.

If a bidder, designee, or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the findings shall be prepared by the Purchasing Officer. In determining responsibility of any bidder, the Town may take into account, in addition to financial responsibility, past records of transactions with the bidder, experience, adequacy of equipment and ability to complete performance within a specific time. (For example, the ability to meet the specified completion date in accordance to the specifications.) A detailed explanation shall be sent promptly to the non-responsible bidder or offeror who shall then have three (3) days to provide evidence to defeat the determination. The final determination shall be made part of the contract file. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for such determination.

Sec. 25. - Contract administration.

A contract administration system is designed to insure that the contractor is performing in accordance with the terms and conditions of the contract. It is the Purchasing Officer's responsibility to match contract terms and prices with invoices. The Town's procedures specifying the structure of review are to be followed. In addition, contract administration results may be utilized by the Purchasing Officer for vendor evaluation.

Sec. 26. - Town procurement records.

Records shall be maintained by the Purchasing Officer.

Sec. 27. - Fiscal responsibility.

Prior to the issuance of any purchase order, contract, change order or contract modification, the Purchasing Officer shall certify that sufficient budgeted funds are available.

Sec. 28. - Change orders and contract modifications.

All change orders and contract modifications will be approved by the Purchasing Officer.

Sec. 29. - Multi-year contracts.

The Town's policy on multi-year contracts includes the following:

- (1) All multi-year contracts presented for approval shall contain the total value of the award for the multi-year period.
- (2) Only the current fiscal year portion shall be encumbered.

Sec. 30. - Contract renewals.

The following governs contract renewals:

- (1) All contracts that contain an optional renewal clause shall be presented for approval to the total dollar value for the initial period of award.
- (2) All requests for contract renewals shall originate from the Purchasing Officer in the form of a requisition indicating the desire for the renewal, the subsequent renewal term and the total dollar value for the renewal period.
- (3) The request shall be submitted at least thirty (30) days prior to the expiration date of the current period.
- (4) Purchasing Officer will obtain contractor approval and submit the necessary correspondence for approval.
- (5) All renewals shall be for the time period specified in the original contract document.

DIVISION 6. - SPECIFICATIONS

Sec. 31. - Responsibility for specifications.

The Purchasing Officer shall prepare, revise, maintain, and monitor specifications for goods, services, and construction required by the Town

DIVISION 7. - DECLARATION OF NON-RESPONSIBILITY

Sec. 32. - Authority to issue a declaration of non-responsibility.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Board of Selectmen are authorized to declare the person non-

responsible for purposes of supplying goods, services, and construction to the Town. The declaration shall be in effect for a period of not more than two years, for all solicitations.

Sec. 33. Indictment.

The causes for such a declaration include:

- (1) Indictment or conviction for commission of a criminal offence as an incident to obtaining or attempting to obtain public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) Indictment or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offences indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Town Contractor;
- (3) Indictment or conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the Town to be so serious as to evidence non responsibility;
 - a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance is not caused by acts beyond the control of the contractor.
- (5) Any other cause the Town determines to be so serious and compelling as to affect responsibility as a Town Contractor, including suspension by another governmental entity for any cause listed in this article.

Sec. 34. - Decision to declare non-responsible.

The Town shall issue a written determination, which shall state the reasons for the action taken, and inform the affected person involved of his rights concerning administrative review.

Sec. 35. - Notice of decision.

A copy of the decision shall be mailed by the United States Postal Services by certified return receipt.

Sec. 36. - Finality of decision.

A decision shall be final or conclusive, unless fraudulent, or the affected person within ten (10) business days after receipt of the decision by certified mail makes an appeal to the Selectmen.

Sec. 37. Appeal of Contract Awards.

Any party who believes he has been adversely affected by the award of a contract may appeal to the Selectmen within seven (7) days. Failure to appeal precludes any right to judicial review.