

MODEL PURCHASING POLICY

The VLCT Municipal Assistance Center developed this model purchasing policy to assist municipalities in their efforts to procure goods and services in a manner that is efficient, timely, cost-effective, and encourages the most open, competitive purchasing process practicable, while treating all vendors equitably. Adopting and following a purchasing policy will increase the public's confidence in the municipal procurement process and will help municipalities adhere to standards and requirements associated with receipt of funds from state and federal government. **Please note that the requirements of a municipal purchasing policy do not take the place of any specific procurement or record-keeping requirements that may be imposed on the municipality by a state or federal governmental contract, grant, or loan.**

This model policy is intended to reflect best practices in municipal procurement, including competitive bidding for certain purchases and compliance with requirements for purchasing with federal funds. We have included some guidance and references to resource materials to help inform choices municipal officials need to make while adapting this model to fit their unique needs. It is also important to harmonize this policy within the context of related existing or proposed financial policies or procedures.

REQUIREMENTS FOR USING STATE OR FEDERAL FUNDS - The original source of most state grant, contract and loan funds is actually the federal government, and therefore any federal requirements associated with the funds are passed along to the recipient municipality. This model policy attempts to incorporate as many of the federal requirements as possible - including the sections on code of conduct and competitive bidding - but the municipality should always carefully read any terms, conditions or other directives prior to accepting the funds in the first place. It is imperative to adhere to purchasing and other requirements. As of 2015, all federal agencies must adhere to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards <http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf>. This is a consolidation of several OMB (Office of Management and Budget) circulars that previously provided guidance for recipients of federal funds. It includes federal requirements for procurement processes, allowable direct and indirect costs, contract provisions and audit standards.

PROCEDURE TO ADOPT A PURCHASING POLICY - All municipal policies must be adopted by majority vote of the selectboard at a meeting held in accordance with Vermont's Open Meeting Law. Consideration and adoption of such a policy should be done well in advance of a major purchase so that there is sufficient time to discuss the relevant issues and prepare a thoughtful and thorough document. Before adoption the selectboard may choose to engage other municipal officials and employees to insure that the policy is reasonable and realistic in terms of the staff resources needed for compliance. After initial adoption, local officials should annually review the town's financial policies to insure that each policy remains current.

Please note that this model policy has been developed for illustrative purposes only. VLCT makes no express or implied endorsement or recommendation of any financial policy, nor does it make any express or implied guarantee of legal enforceability or legal compliance, nor does VLCT represent that any particular policy is appropriate for any particular municipality. Your legal counsel should review any proposed financial policy before adopting it.

As always, please contact the Municipal Assistance Center if you have questions at info@vlct.org or 800-649-7915.

Please carefully review further explanation of certain sections of the Model Purchasing Policy below:

AFFIRMATIVE ACTION AND LOCAL PREFERENCE - Federal regulations require that towns include minority and women-owned businesses in their bidding processes. Municipalities must maintain written evidence including copies of correspondence that provide evidence of efforts made to reach out to minority and women-owned businesses as well as evidence that the process was fair and equitable with no unfair competitive practices engaged in by the town or vendors.

Federal regulations also require that when federal funds are used for a purchase, the municipality may not exercise a preference for businesses or suppliers based solely on location. On the other hand, when a purchase or contract is funded by local funds a municipality is free to prefer businesses or suppliers that are based in or near the municipality. Some communities have set a percentage rate above the low bid when preference will be given to the local contractor.

CODE OF CONDUCT - Federal regulations require that real or apparent conflicts of interest that may arise in the context of municipal purchases and contracting are addressed. If the municipality does not already have a separate conflict of interest policy, it is important to address this topic in the body of a purchasing policy. At a minimum, the policy should define a procedure for public disclosure of the potential conflict and the level of participation permitted when discussion or voting takes place related to the purchase of an item where the conflict exists. It is not uncommon for a board member or the family member of a board member to own a local business that supplies materials and/or services to a municipality. In such instances, however, the board member should not be involved in the selection, award, or administration of the purchase or contract.

DOCUMENTATION - Federal regulations require that for construction projects over \$2,000 and for all other purchase over \$3,000, the municipality must maintain written documentation of the entire bidding and selection process. This includes documentation of efforts to comply with federal affirmative action requirements including solicitation lists and copies of advertisements; copies of the Request for Bids, Bids and related documentation, copies of meeting minutes where decisions were made, and any other applicable documents.

PURCHASING AUTHORITY - State law gives the selectboard the ultimate authority over all municipal purchases and allows for the delegation of this authority to municipal officials or employees. A municipal purchasing policy allows the selectboard to officially delegate purchasing authority and also sets parameters and requirements for the exercise of this authority.

Municipalities need to customize this model policy to compliment the size and structure of the particular municipal government. In communities where there is a town or city manager, that individual is the authorized purchasing agent by state law. 24 V.S.A. § 1231(3). In communities without a manager, the selectboard is the authorized purchasing agent, but it may designate specific town officers or employees to make and/or authorize certain purchases.

Depending on the level of municipal staff expertise, the selectboard may want to grant some ability to certain town officers or employees to make purchases of a reasonable dollar amount without requiring prior selectboard authorization. By setting thresholds as to the dollar amount that can be spent without prior approval, and specifying procedures to follow when a purchase is made, municipal affairs can continue to function between selectboard meetings.

PURCHASING LEVELS - This model policy differentiates between three levels of purchases: "Major," "Minor," and "Incidental." The selectboard should assign dollar amounts to each of these categories of purchases when customizing this model, using amounts that make sense according to the size of the community and the expertise of municipal staff. "Major" purchases should set at a level of significant cost for which the selectboard requires a formal bid process. "Minor" purchases should be set at a dollar value so that they may only be made by an authorized purchasing agent with prior approval. The selectboard may also require that several quotes are obtained before the purchase is made. "Incidental" purchases should be set at a low enough level so that they may be made by designated a purchasing agent without prior approval.

There are also three categories of purchases that are created by federal regulation, and these are titled "micro," "small," and "large." The regulations impose different procedural requirements on each category that must be followed in order for the municipality to receive or retain federal grant funding. And while a municipality may impose purchasing and bidding requirements that are more strict than those imposed by the federal government, it may not impose requirements that are less strict.

Under the federal government's categories, so-called "large" purchases are those that exceed the so-called "Simplified Acquisition Threshold," which is set at \$150,000 in 2015 and is an inflation-adjusted number. Construction projects of any size also fit within the federal definition of "large" purchases. If these purchases are made with federal funds, the federal government requires the use of a sealed bid process. Purchases are "small" if they are between \$3,000 (\$2,000 in the case of construction projects subject to Davis Bacon requirements) and \$150,000. Purchases of this size require price or rate quotes from "an adequate number of qualified sources," which means that two or more vendors should be asked to provide quotes. "Micro" purchases are categorized by the federal government as those under \$3,000 (\$2,000 in the case of construction projects subject to Davis Bacon requirements) and may be awarded without any kind of competitive quotes if the price is deemed to be reasonable. Despite the lack of formal requirements for "micro" purchases, a reasonable effort should be made to distribute purchases equitably among qualified vendors.

COMPETITIVE BIDDING / BID SELECTION - The use of federal funds usually requires a formal bid procedure, including a sealed bid process for purchases over \$150,000. Municipalities are free to set much lower thresholds and require a formal bid process and/or sealed bids for any size purchase.

While competitive bidding is not required under Vermont law, it can have significant advantages for local governments. A choice of purchasing options allows a municipality to locate the most cost-effective suppliers of goods and services and make effective cost/quality comparisons. The process may include verbal and/or written quotations for purchases below a certain dollar threshold and a formal bidding process for higher dollar purchases. The use of such a process does not necessitate a low-bidder approach. The "Criteria for Bid Selection" section should clearly articulate the municipality's expectations.

In purchasing the services of a professional consultant, or when a service is of a specialized nature, the selection process is somewhat different. Cost, while important, should not be the most important factor. More important factors to consider are the expertise, knowledge, financial resources and experience of the individual or company providing the service. The selection processes can include the following:

Request for Qualification (RFQ). The RFQ process evaluates the professional qualifications of an individual or firm to provide consulting services. It usually is not project specific, but may be related to specific skills being sought. If you are planning a bridge renovation, you will be interested in structural engineering services. VTTrans uses the RFQ process to develop a list of qualified consultants that will be considered for any future work the agency may be planning. These lists are available to communities upon request.

Request for Bid (also called "Request for Proposal" or "RFP"). A request for bids invites qualified firms to submit bids / proposals for a specific project. The project should be sufficiently well defined to give the consultant some good understanding of the task to be accomplished and any timelines, meetings with the public and/or board members or other tasks to be performed.

With either a Request for Qualifications or a Request for Bids/Proposals, the procedure to follow for soliciting proposals is similar. Prepare an invitation to submit a proposal that briefly defines the professional service being sought. Include a reasonable deadline (including date, time and location) for submitting the proposals. A statement should also be included that "reserves the community's right to reject any or all bids if such action is deemed in the best interest of the community."

Advertise this invitation in a newspaper with a sufficiently broad circulation to reach all who may be qualified. In addition to the newspaper ad, send the notice to a selected group that has previously worked for the community or that may be qualified. Document the outreach performed, and remember that federal funding requires bids to be solicited from minority and women-owned businesses. The submitted proposals should be opened publicly at the designated time. Either the board or an appointed selection committee should review the proposals and arrange for interviews of those determined to be most qualified.

It is important to remember that no bid may be awarded to a vendor who has been debarred, suspended, or otherwise excluded from or ineligible for federal funding. Excluded parties (vendors) may be found on the website Sam.gov, the on-line grant award management system used for federal grants management.

PURCHASING POLICY

TOWN OF _____

Adopted _____, 20__

PURPOSE. The purpose of this Purchasing Policy is to obtain the highest quality goods and services for the Town of _____ at the lowest possible price, to exercise financial control over the purchasing process, 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.

Officers, employees and agents who fail to follow the above Code of Conduct may 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, 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 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.

PURCHASING AUTHORITY.

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

[insert list of specific positions that have authorization to make purchases]

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.

Incidental Purchases. Employees who have been designated to act as Purchasing Agents may make purchases of up to \$*[insert dollar amount]* 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 \$*[insert dollar amount]* and \$*[insert dollar amount]* only with prior approval of the *[insert either "Selectboard" or "Town Manager"]* 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 \$*[insert dollar amount]* 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 \$3,000 (\$2,000 in the case of construction projects subject to Davis Bacon requirements) and \$150,000, 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 \$*[insert dollar amount]* and \$*[insert dollar amount]*, 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 \$*[insert dollar amount up to \$150,000, which is the large purchase or simplified acquisition threshold under federal regulations]* or more must follow a sealed bid process as outlined below.

Purchases at or exceeding \$150,000 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, and advertisements placed in a newspaper of general circulation in the region.

BID SPECIFICATIONS. A list of bid specifications shall be prepared for each purchase over \$*[insert dollar amount]* 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 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.

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:

1. Price.
2. Bidder's ability to perform within the specified time limits.
3. Bidder's experience and reputation, including past performance for the Town.
4. Quality of the materials and services specified in the bid.
5. Bidder's ability to meet other terms and conditions, including insurance and bond requirements.
6. Bidder's financial responsibility.
7. Bidder's availability to provide future service, maintenance, and support.
8. Nature and size of bidder.
9. Contract provisions that are acceptable to the Town.
10. 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.
11. Any other factors that the Selectboard determines are relevant and appropriate in connection with a given project or service.

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

12. There shall be no preference exercised for local contractors or suppliers.
13. Minority and women-owned businesses must be included in the solicitation list for the request for proposal.
13. The Selectboard will not select a bidder who is listed on the Excluded Parties List System website (<https://www.sam.gov>).

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 already submitted a bid and a new bid process will be initiated. 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 \$[insert dollar amount] 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.

Emergency Purchases. The Selectboard may award contracts and make purchases for the purpose of meeting the public emergency 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, and insurance services with a value of up to \$[insert dollar amount].

Federally funded non-competitive purchases for \$150,000 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 _____, Vermont, this ___ day of _____ and is effective as of this date until amended or repealed.

Chairperson

