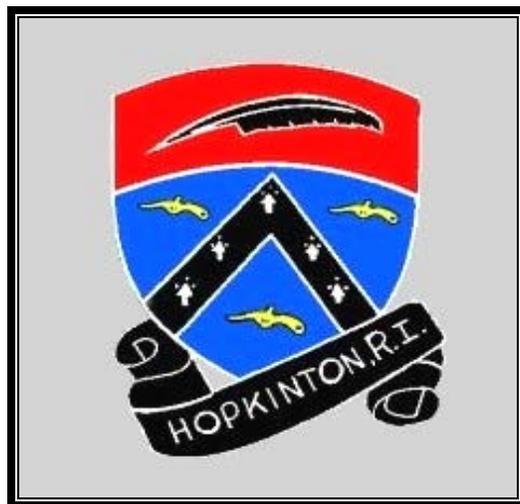


Town of Hopkinton

Procurement Policy

Adopted on August 17, 2015



PROCUREMENT POLICY

Adopted: 08/17/2015

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1.0 INTRODUCTION

1.1 **General.** Established for the Town of Hopkinton (hereinafter, "the Town") by Adoption of the Town Council on August 19, 2015, this Procurement Policy (Policy) complies with the Annual Contributions Contract (ACC) between the Town and the United States Department of Housing and Urban Development (HUD), Federal Regulations at 2 CFR §200.317 through §200.326, *Procurement Standards*, the procurement standards of the Procurement Handbook for Public Housing Authorities (PHAs), HUD Handbook 7460.8, REV 2, and applicable State laws and Local ordinances.

2.0 GENERAL PROVISIONS

2.1 **General.** The Town shall:

2.1.1 Provide for a procurement system of quality and integrity;

2.1.2 Provide for the fair and equitable treatment of all persons or firms involved in purchasing by the Town;

2.1.3 Ensure that supplies and services (including construction) are procured efficiently, effectively, and at the most favorable and valuable prices available to the Town;

2.1.4 Promote competition in contracting; and

2.1.5 Assure that the Town purchasing actions are in full compliance with applicable Federal standards, HUD regulations, State laws, and Local ordinances.

2.2 **Application.** This Policy applies to all procurement actions of the Town, regardless of the source of funds, except as noted under "exclusions" below. However, nothing in this Policy shall prevent the Town from complying with the terms and conditions of any grant, contract, gift or bequest that is otherwise consistent with the law. When both HUD and non-Federal grant funds are used for a project, the work to be accomplished with the funds should be separately identified prior to procurement so that appropriate requirements can be applied, if necessary. If it is not possible to separate the funds, HUD procurement regulations shall be applied to the total project. If funds and work can be separated and work can be completed by a new contract, then regulations applicable to the source of funding may be followed.

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2.3 Definitions.

Procurement- as used in this Policy, includes the procuring, purchasing, leasing, or renting of: (1) goods, supplies, equipment, and materials, (2) construction and maintenance; consultant services, (3) Architectural and Engineering (A/E) services, (4) Social Services, and (5) other services.

Lowest Evaluated Bid or Lowest Responsive Bid- the bid offered by a supplier, service provider, or contractor that is found to be the lowest after consideration of all relevant factors and the calculation of any weighting for these factors, provided that such factors have been specified in the Request for Proposal (RFP) documents. It can be deduced from the definition that the "lowest evaluated bidder" is the bidder whose bid has been evaluated and found offer lowest cost as well as meet all terms and conditions stipulated in the bid documents.

Responsive Bidder or Offeror- means a vendor who has submitted a bid that conforms in all material respects to the RFP. A responsive bid is one that is in substantial conformance with the requirements of the invitation for bids.

Responsible Bidder or Offeror- means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

2.4 Exclusions. These excluded areas are subject to applicable State laws and Local ordinances.

2.4.1 **Section 8.** This policy does not govern administrative fees earned under the Section 8 voucher program, the award of vouchers under the Section 8 program, the execution of landlord Housing Assistance Payments contracts under that program, or non-program income, e.g., fee-for-service revenue under 24 CFR §990.

2.4.2 **State Mandated Costs.** Pursuant to Rhode Island General Laws (R.I.G.L.), §45-55-13, any state initiated statutory or executive action or rule, regulation or policy adopted by a state department or agency or a quasi-public department or agency that requires a local government to establish, expand, or modify its activities in a way as to necessitate additional expenditures from local government revenue sources where the expenditures are not otherwise reimbursed in whole are exempt from the procurement procedures.

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- 2.4.3 **Multi-town Insurance Corporations and Cooperative Risk Management Programs.** Pursuant to R.I.G.L., §45-55-13.1, the Town may, through passage of a resolution, establish agreements between two (2) or more Towns for obtaining or effecting insurance by self-insurance, for obtaining or effecting insurance from any insurer authorized to transact insurance in the state, or for obtaining and effecting insurance secured in accordance with any other method provided by law, or by combination and of the provisions of this section for obtaining and effecting insurance. These expenditures are exempt from procurement procedures, however must be approved by the Town Council.
- 2.4.4 **Multi-town Energy Aggregation Programs.** Pursuant to R.I.G.L., §45-55-13.2, the procurement procedures do not apply to entities organized for the purpose of negotiation the purchase of electric power, or energy or energy related services. These expenditures are exempt from procurement procedures, however must be approved by the Town Council.
- 2.4.5 **Staff Consultants.** Pursuant to R.I.G.L., §45-55-14, the procurement of the service of an attorney, physician or dentist by a municipality, is exempt from procurement procedures and is selected by the Town Council.
- 2.5 **Changes in Laws and Regulations.** In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Policies, automatically supersede these Policies.
- 2.6 **Public Access to Procurement Information.** Most procurement information that is not proprietary is a matter of public record and shall be available to the public to the extent provided in the Rhode Island Freedom of Information Act.

3.0 ETHICS IN PUBLIC CONTRACTING

- 3.1 **General.** The Town hereby establishes this code of conduct regarding procurement issues and actions, and shall implement a system of sanctions for violations. This code of conduct is consistent with applicable Federal and State laws, and Local ordinances.
- 3.2 **Conflicts of Interest.** No employee, elected official, or Council Member of the Town shall participate directly or indirectly in the selection, award, or administration of any contract if a conflict of interest, either real or

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apparent, would be involved. This type of conflict would be when one of the persons listed below has a financial or any other type of interest in a firm competing for the award:

- 3.2.1 An employee, elected official or Council Member involved in making the award;
 - 3.2.2 His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister);
 - 3.2.3 His/her partner; or
 - 3.2.4 An organization which employs or is negotiating to employ, or has an arrangement concerning prospective employment of any of the above.
- 3.3 **Gratuities, Kickbacks, and Use of Confidential Information.** No employee, elected official, or Council Member of the Town shall ask for or accept gratuities, favors, or items of more than nominal value (i.e. inexpensive hat with logo) from any contractor, potential contractor, or party to any subcontract, and shall not knowingly use confidential information for actual or anticipated personal gain.
- 3.4 **Prohibition against Contingent Fees.** Contractors wanting to do business with the Town must not hire a person to solicit or secure a contract for a commission, percentage, brokerage, or contingent fee, except for bona fide established commercial selling agencies.

4.0 PROCUREMENT PLANNING

- 4.1 **General.** Planning is essential to managing the procurement function properly. Hence, the Town will periodically review its record of prior purchases, as well as future needs, to:
- 4.1.1 Find patterns of procurement actions that could be performed more efficiently or economically;
 - 4.1.2 Maximize competition and competitive pricing among contracts and decrease the Town's procurement costs;
 - 4.1.3 Reduce Town administrative costs;

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4.1.4 Ensure that supplies and services are obtained without any need for re-procurement (i.e., resolving bid protests); and

4.1.5 Minimize errors that occur when there is inadequate lead time.

Consideration shall be given to storage, security, and handling requirements when planning the most appropriate purchasing actions.

5.0 PROCUREMENT METHODS

5.1 **Small Purchase Procurement.** Pursuant to R.I.G.L., §45-55-9, procurements not to exceed an aggregate amount to ten thousand dollars (\$10,000) for construction and five thousand dollars (\$5,000) for all other purchases may be made in accordance with the small purchase procedures set forth by the Town Council. The Town of Hopkinton may procure goods and services, under the small purchases threshold, under the following circumstances:

With Approval of the Town Manager

Small Purchases

- From \$1 to \$500- no written quotes are required. (Micro Purchase)
- From \$501 to \$1,500- two written quotes are required.
- From \$1,501 to \$5,000- three written quotes are required.
- From \$5,001 to \$10,000 for a construction purchase- three written quotes are required.

Master Pricing Agreement (MPA)

- The State of Rhode Island's Master Price Agreement (MPA) negates the need for other written quotes: however, it does not preclude department heads from obtaining other written quotes, when warranted.

5.1.1 **Quote for Small Purchases.** To the greatest extent feasible, and to promote competition, small purchases should be distributed among qualified sources. Quotations for Small Purchases (QSP), or quotes, may be obtained orally (either in person or by phone), by fax, in writing, or through e-procurement.

5.1.2 **Vouchers for Small Purchases.** Vouchers are required for all goods and services and must be submitted with invoices and documentation of quotes (if applicable) to the Finance Office

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before payment to vendor can be processed. All voucher submitted must include vendor name, invoice number, invoice date, payment amount, expense account to be charged, and a Department Head's signature.

5.1.3 Noncompetitive Purchases. Procurements that fall under the Small Purchase Procurement threshold do not need the required written quotes, if one of the following applies:

5.1.3.1 Sole Source Procurement. The Department Head determines, that there is only one source for the required supply, service, or construction item;

5.1.3.2 Emergency Procurement. The Department Head may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations or where the procurement will be in the best interest of the city as established by properly promulgated rules and regulations; provided, that emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency, and for the selection of the particular contractor, must be provided to the Finance Office when voucher is submitted.

5.1.3.3 Qualification based selection of A/E. Pursuant to R.I.G.L., §45-55-8.1, when the Purchasing Agent determines that the Town needs the services of a professional architect or engineer, the Purchasing Agent shall follow the qualification based selection process for the procurement of architectural and engineering consulting services.

5.1.4 Small Purchases Award. Award shall be made to the responsive and responsible vendor that submits the lowest cost to the Town. If award is to be made for reasons other than lowest price, documentation shall be provided in the contract file.

5.1.5 Aggregation of Purchases. The Town or its employees shall not break down requirements aggregating more than the small purchase threshold (or the Micro Purchase threshold) into several purchases that are less than the applicable threshold merely to: (1) permit use

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of the small purchase procedures or (2) avoid any requirements that applies to purchases that exceed the Micro Purchase threshold.

- 5.2 **Competitive Sealed Bidding.** Competitive Sealed Bidding shall be used for all contracts or purchases that exceed the small purchase threshold and that are not competitive negotiation or non-competitive proposals, as these terms are defined in this Policy. The Town Council established purchasing procedures, for contracts above the Small Purchase Procurement threshold, as follows:

Competitive Sealed Bid

- Over \$5,000 for any purchase other than a construction purchase- advertising and complete sealed bidding are required.
- Over \$10,000 for any construction purchase- advertising and complete sealed bidding are required.

Master Pricing Agreement (MPA)

- The State of Rhode Island's Master Price Agreement (MPA) negates the need for other written quotes: however, it does not preclude department heads from obtaining other written quotes, when warranted.

Competitive sealed bidding requires an Invitation for Bids (IFB) or Request for Proposal (RFP) to be issued by the Town which specifies the standard instructions, specialized instructions, bid due date, bid opening date, bid receipt location, bid award date, specifications, and terms and conditions of the contract. Award of the IFB or RFP is normally made on the basis of the proposal that represents the best overall value to the Town, considering price and other factors, set forth in the solicitation and not solely the lowest price.

- 5.2.1 **Conditions for Using Competitive Sealed Bids.** Pursuant to R.I.G.L., §45-55-5, contracts exceeding an aggregate amount to ten thousand dollars (\$10,000) for construction and five thousand dollars (\$5,000) shall be awarded by competitive sealed bidding, unless they are professional engineering/architectural services pursuant to R.I.G.L. §45-55-8-1 and it is determined in writing that this method is not practical. Factors to be considered in determining whether competitive sealed bid is practicable shall include whether:

- (1) Specifications can be prepared that permit award on the basis of either the lowest qualified bid price or the lowest qualified evaluated bid price; and

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(2) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.

5.2.2 Solicitation and Receipt of Bids. The IFB or RFP shall state whether award shall be made on the basis of the lowest bid price or the lowest evaluated or responsive bid price. If the latter basis is used, the objective measurable criteria to be utilized shall be stated in the request for proposal, if available.

Adequate public notice of the IFB or RFP shall be given a sufficient time prior to the date stated in the notice for the opening of bids. Notice may include publication in a newspaper of general circulation in the state as determined by the Purchasing Agent for the Town not less than seven (7) days nor more than twenty-one (21) days before the date set for opening of the bids. The Purchasing Agent may make a written determination that the twenty-one (21) day limitation needs to be waived. The written determination shall state the reason why the twenty-one (21) day limitation is being waived and shall state the number of days, giving a minimum and maximum, before the date set for the opening of bids when public notice is to be given.

5.2.3 Bid Opening and Award. Bids shall be opened publicly in full view of the public at the time and place designated in the IFB or RFP. Each bid, together with the name of the bidder, shall be recorded and an abstract made available for public inspection. Subsequent to the awarding of the bid, all documents pertinent to the awarding of the bid shall be made available and open to public inspection and retained in the bid file.

The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price, or lowest evaluated or responsive bid price.

All contracts awarded by competitive sealed bidding shall be awarded by the Purchasing Agent to the lowest and best bidder. In addition to price, there shall be considered the following in awarding any contract:

- The ability, capacity and skill of the bidder to perform the contract.

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- Whether the bidder can perform the contract within the time specified, without delay or interference.
- The character, integrity, reputation, judgement, experience and efficiency of the bidder.
- The quality of performance of previous contracts.
- The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- The quality, availability adaptability of the suppliers or contractual services to the particular use required.
- The ability of the bidder to provide future maintenance and service for the use of the subject of the contract.
- The number and scope of conditions attached to the bid.

5.2.4 **Bid Deposits.** When deemed necessary by the Purchasing Agent, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Purchasing Agent has required such. A successful bidder shall forfeit any surety required by the Purchasing Agent upon failure on his part to enter into a contract within ten (10) days after the award.

5.2.5 **Tie Bids.** Award of all tie bids shall be made by the Town Council. However, the Town Council has the authority to reject any and all bids.

5.2.6 **Mistakes in Bids.** Correction or withdrawal of bids may be allowed only to the extent permitted by regulations enumerated within the request for proposal.

5.2.7 **Responsibilities of bidders and offerors.** Pursuant to R.I.G.L., §45-55-11, a written determination of responsibility of a bidder or offeror shall be made in accordance with regulations issued by the Town.

A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. The failure of a bidder or offeror to promptly supply information in connection with a reasonable inquiry

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may be grounds for a determination of non-responsibility with respect to a bidder or offeror.

Except as otherwise provided, by law, information furnished by a bidder or offeror pursuant to this section may not be disclosed outside of the purchasing department administering the contract without prior written consent of the bidder or offeror.

5.3 Negotiations after Unsuccessful Competitive Sealed Bid.

5.3.1 **Conditions for Use Pursuant to R.I.G.L., §45-55-7,** in the event that all bids submitted result in bid prices in excess of the funds available for the purchase, and the Purchasing Agent determines in writing:

- (1) That there are no additional funds available from any source to permit an award to the lowest responsive and responsible bidder; and
- (2) The best interest of the Town will not permit the delay attendant to a re-solicitation under revised specifications, or for revised quantities, under competitive sealed bidding, then a negotiated award may be made.

5.3.2 **Solicitation.** Where there is more than one bidder, competitive negotiations, pursuant to § 45-55-6, shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined, in writing, to be the lowest responsive and responsible bidders to the competitive sealed bid invitation. Competitive negotiations shall be conducted under the following restrictions:

- (1) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in the discussions; or
- (2) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price, or lowest evaluated bid price submitted by any responsive and responsible offeror.

5.3.3 **Noncompetitive Proposals.** When after competitive sealed bidding, it is determined, in writing, that there is only one responsive and

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responsible bidder, a noncompetitive negotiated award may be made with that bidder. (See Section 5.6.1.4)

5.4 Competitive Negotiation.

5.4.1 Conditions for Use. Pursuant to R.I.G.L., §45-55-6, when the Purchasing Agent determines, in writing, that the use of competitive sealed bidding is not practicable, for construction contracts over \$10,000 or any other contract over \$5,000, a contract may be awarded by competitive negotiation.

Contracts may be competitively negotiated when it is determined, in writing, by the Purchasing Agent that the bid prices received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which:

- (1) Each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate; and
- (2) The negotiated price is lower than the lowest rejected bid by any competitive bidder; and
- (3) The negotiated price is the lowest negotiated price offered by a competitive offeror.

5.4.2 Solicitation. Adequate public notice of the IFB or RFP shall be given in the same manner as provided for Competitive Sealed Bids. (See Section 5.3.2)

The IFB or RFP shall indicate the relative importance of price and other evaluation factors.

5.4.3 Negotiations. Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined, in writing, to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:

- (1) With respect to prices, where prices are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions; or

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(2) Where time of delivery or performance will not permit discussions; or

(3) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable prices, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

5.4.4 **Award.** Award shall be made to the responsible offeror whose proposal is determined, in writing, to be the most advantageous to the Town taking into consideration price and the evaluation factors stated in the IFB or RFP.

5.5 Noncompetitive Proposals.

5.5.1 **Conditions for Use.** Procurement by noncompetitive proposals (sole- or single-source) may be used only when the award of a contract is not feasible using small purchase procedures or competitive sealed bids, and if one of the following applies:

5.5.1.1 **Sole Source Procurement.** The Purchasing Agent determines, in writing, that there is only one source for the required supply, service, or construction item;

5.5.1.2 **Emergency Procurement.** The Purchasing Agent may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations or where the procurement will be in the best interest of the city as established by properly promulgated rules and regulations; provided, that emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency, and for the selection of the particular contractor, shall be included in the contract file.

5.5.1.3 **Qualification based selection of A/E.** Pursuant to R.I.G.L., §45-55-8.1, when the Purchasing Agent

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determines that the Town needs the services of a professional architect or engineer, the Purchasing Agent shall follow the qualification based selection process for the procurement of architectural and engineering consulting services.

5.5.1.3 HUD authorizes the use of noncompetitive proposals; or

5.5.1.4 After solicitation of a number of sources, competition is determined inadequate.

5.5.2 **Justification.** Each procurement based on noncompetitive proposals shall be supported by a written justification for the selection of this method. The justification shall be documented in writing by the Purchasing Agent in the procurement file. Poor planning or lack of planning is not justification for emergency or sole-source procurements.

When HUD or Federal grants are used to fund procurements, the justification to be included in the procurement file should include the following information:

5.5.2.1 Description of the requirement;

5.5.2.2 History of prior purchases and their nature (competitive vs. noncompetitive);

5.5.2.3 The specific exception in 2 CFR §200.320(f)(1)-(4) which applies;

5.5.2.4 Statement as to the unique circumstances that require award by noncompetitive proposals;

5.5.2.5 Description of the efforts made to find competitive sources (advertisement in trade journals or local publications, phone calls to local suppliers, issuance of a written solicitation, etc.);

5.5.2.6 Statement as to efforts that will be taken in the future to promote competition for the requirement;

5.5.2.7 Signature by the Purchasing Agent; and

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5.5.2.8 **Price Reasonableness.** The reasonableness of the price for all procurements based on noncompetitive proposals shall be determined by performing an analysis, as described in this Policy.

5.6 **Cooperative Purchasing/Intergovernmental Agreements.** The Town may enter into State and/or local cooperative or intergovernmental agreements to purchase or use common supplies, equipment, or services. The decision to use an inter-town agreement instead of conducting a direct procurement shall be based on economy and efficiency. If used, the inter-town agreement shall stipulate who is authorized to purchase on behalf of the participating parties and shall specify inspection, acceptance, termination, payment, and other relevant terms and conditions. The Town may use Federal or State excess and surplus property instead of purchasing new equipment and property if feasible and if it will result in a reduction of project costs. The goods and services obtained under a cooperative purchasing agreement must have been procured in accordance with 2 CFR §200.317 through §200.326.

6.0 INDEPENDENT COST ESTIMATE (ICE)

6.1 **General.** For all purchases above the Small Purchases threshold, the Town shall prepare an ICE prior to solicitation. The ICE can be informal but should be prepared by the Purchasing Agent or the applicable Department Head to establish the best estimate for anticipated cost of the purchase. The level of detail shall be commensurate with the cost and complexity of the item to be purchased.

7.0 COST AND PRICE ANALYSIS (CPA)

7.1 **General.** The Town shall require assurance that, before entering into a contract, the price is reasonable, in accordance with the following instructions.

7.1.1 **Micro Purchases.** No formal cost or price analysis is required. Rather, the execution of a contract by the Department Head (through a Voucher or other means) shall serve as the Department Head's determination that the price obtained is reasonable, which may be based on the Department Head's prior experience or other factors.

7.1.2 **Small Purchases.** A comparison with other offers shall generally be sufficient determination of the reasonableness of price and no further analysis is required. If required number of quotes is not

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obtained to establish reasonableness through price competition, the applicable Department Head shall document price reasonableness through other means, such as prior purchases of this nature, catalog prices, the Department Head's personal knowledge at the time of purchase, comparison to the ICE, or any other reasonable basis.

7.1.5 Competitive Sealed Bids. The presence of adequate competition should generally be sufficient to establish price reasonableness. Where sufficient proposals are not received, the Town must compare the price with the ICE. For competitive proposals where prices cannot be easily compared among offerors, where there is not adequate competition, or where the price is substantially greater than the ICE, the Town must conduct a cost analysis, to ensure that the price paid is reasonable.

7.1.6 Contract Modifications. A cost analysis shall be conducted for all contract modifications for projects that were procured through Competitive Sealed Bids, or Non-Competitive Proposals, or for projects originally procured through Small Purchase procedures and the amount of the contract modification will result in a total contract price in excess of \$10,000 for construction purchases or \$5,000 for any other purchases.

8.0 SOLICITATION AND ADVERTISING

8.1 Method of Solicitation.

8.1.1 Micro Purchases. The Town may contact only one source if the price is less than \$500.

8.1.2 Small Purchases. Quotes may be solicited in writing, through fax, E-Procurement, or by any other reasonable method. However, documentation of quotes must be provided with expense vouchers to the Finance Department.

8.1.3 Competitive Sealed Bids. Solicitation must be done publicly. The Town must use one or more following solicitation methods, provided that the method employed provides for meaningful competition.

8.1.3.1 Advertising in newspapers or other print mediums of local or general circulations.

8.1.3.2 Advertising in various trade journals or publications (for construction).

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- 8.1.3.3 E-Procurement. The Town may conduct its public procurements through the Internet using e-procurement systems. However, all e-procurements must otherwise be in compliance with 2 CFR §200.317 through §200.326, State and local requirements, and the Town's procurement policy.
- 8.2 **Time Frame.** For purchases of more than \$10,000 for construction purchases and \$5,000 for any other purchases, the public notice should run not less than once each week for two consecutive weeks.
- 8.3 **Form.** Notices/advertisements should state, at a minimum, the place, date, and time that the bids or proposals are due, a contact that can provide a copy of, and information about, the solicitation, and a brief description of the needed items(s).
- 8.4 **Time Period for Submission of Bids.** A minimum of 15 days shall generally be provided for preparation and submission of competitive sealed bids. However, the Town Manager may allow for a shorter period under extraordinary circumstances.
- 8.5 **Cancellation of Solicitations.** Pursuant to R.I.G.L. §45-55-10, an invitation for bids, a request for proposals, or other solicitation may be cancelled, or all bids or proposals rejected, if it is determined, in writing, that action if taken is not in the best interest of the Town and approved by the Town Manager.
- 8.6 **Credit (or Purchasing) Cards.** Credit card usage should follow the rules for all other small purchases. For example, the Purchasing Agent may use a credit card for Micro Purchases without obtaining additional quotes provided the price is considered reasonable. However, for amounts above the Micro Purchase level, the Purchasing Agent would generally need to have obtained a reasonable number of quotes before purchasing via a credit card. When using credit cards, the Town shall adopt reasonable safeguards to assure that they are used only for intended purposes (for instance, limiting the types of purchases or the amount of purchases that are permitted with credit cards).

9.0 BONDING REQUIREMENTS

- 9.1 **General.** The standards under this section apply to construction contracts that exceed \$10,000 or any other contract that exceed \$5,000. There are no bonding requirements for small purchases. The Town may require bonds in these latter circumstances when deemed appropriate.

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- 9.1.1 **Performance and Payment Bonds.** A contractor or vendor shall provide a corporate surety bond from a surety company authorized to do business in the state to guarantee the full and faithful performance of his contract obligations and the payment of labor and material expended pursuant to the contract, whenever and in such amounts as is deemed necessary by the Purchasing Agent.

These bonds must be obtained from guarantee or surety companies acceptable to the U. S. Government and authorized to do business in the State of Rhode Island. Individual sureties shall not be considered. U. S. Treasury Circular Number 570 lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies on this circular is mandatory.

10.0 CONTRACTOR QUALIFICATIONS AND DUTIES

10.1 Contractor Responsibility

- 10.1.1 The Town shall not award any contract until the prospective contractor, i.e., low responsive bidder, or successful offeror, has been determined to be responsible. A responsible bidder/offeror must:

10.1.1.1 Have adequate financial resources to perform the contract, or the ability to obtain them;

10.1.1.2 Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all of the bidder's/offeror's existing commercial and governmental business commitments;

10.1.1.3 Have a satisfactory performance record;

10.1.1.4 Have a satisfactory record of integrity and business ethics;

10.1.1.5 Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;

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10.1.1.6 Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and,

10.1.1.7 Be otherwise qualified and eligible to receive an award under applicable laws and regulations, including not be suspended, debarred or under a HUD-imposed LDP.

10.1.2 If a prospective contractor is found to be non-responsible, a written determination of non-responsibility shall be prepared and included in the official contract file, and the prospective contractor shall be advised of the reasons for the determination.

10.2 **Suspension and Debarment.** Contracts shall not be awarded to debarred, suspended, or ineligible contractors. Contractors may be suspended, debarred, or determined to be ineligible by HUD in accordance with HUD regulations (2 CFR §200.317 through §200.326) or by other Federal agencies, e.g., Department of Labor for violation of labor regulations, when necessary to protect housing authorities in their business dealings. Prior to issuance of a contract, Town staff shall, as detailed within Section 10.2.H.1 and 10.2.H.2 of HUD Procurement Handbook 7460.8 REV 2, conduct the required searches within the HUD Limited Denial of Participation (LDP) system and the U.S. General Services Administration System for Award Management (SAM) and place within the applicable contract file a printed copy of the results of each such search.

10.3 **Vendor Lists.** All interested businesses shall be given the opportunity to be included on vendor mailing lists. Any lists of persons, firms, or products which are used in the purchase of supplies and services (including construction) shall be kept current and include enough sources to ensure competition.

11.0 PREQUALIFICATION OF CONTRACTORS

11.1 **Contractor Responsibility.** Pursuant to R.I.G.L §45-55-12, the Town may provide for prequalification of suppliers as responsible prospective contractors for particular types of supplies, services, and construction. If the Town chooses to provide for prequalification of suppliers, it shall adopt regulations for prequalification in the same manner provided for in the adoption of ordinances in the manner provided for in the legislative or home rule charter of the Town. Solicitation mailing lists of potential contractors of supplies, services, and construction shall include, but need not be limited to, prequalified contractors. Prequalification shall not foreclose a written determination:

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- (1) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible; or
- (2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

12.0 CONTRACT PRICING ARRANGEMENTS

- 12.1 **Contract Types.** Any type of contract which is appropriate to the procurement and which will promote the best interests of the Town may be used, **provided the cost -plus-a-percentage-of-cost and percentage-of-construction-cost methods are not used.** All solicitations and contracts shall include the clauses and provisions necessary to define the rights and responsibilities of both the contractor and the Town. For all cost reimbursement contracts, the Town must include a written determination as to why no other contract type is suitable. Further, the contract must include a ceiling price that the contractor exceeds at its own risk.
- 12.2 **Options.** Options for additional quantities or performance periods may be included in contracts, provided that:
- 12.2.1 The option is contained in the solicitation;
 - 12.2.2 The option is a unilateral right of the Town;
 - 12.2.3 The contract states a limit on the additional quantities and the overall term of the contract;
 - 12.2.4 The options are evaluated as part of the initial competition;
 - 12.2.5 The contract states the period within which the options may be exercised;
 - 12.2.6 The options may be exercised only at the price specified in or reasonably determinable from the contract; and
 - 12.2.7 The options may be exercised only if determined to be more advantageous to the Town than conducting a new procurement.

13.0 CONTRACT CLAUSES

- 13.1 **Contract Pricing Arrangements.** All contracts shall identify the contract pricing arrangement as well as other pertinent terms and conditions, as determined by the Town.

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13.2 Required Forms. Additionally, the forms HUD-5369; 5369-A; 5369-B; 5369; 5370; 5370-C (Sections I and II); 51915; and 51915-A, which contain all HUD-required clauses and certifications for contracts of more than \$150,000, as well as any forms/clauses as required by HUD for small purchases, shall be used, as applicable, in all corresponding solicitations and contracts that may use any portion of HUD or Federal grant funds.

13.3 Required Contract Clauses: The Town shall ensure that all HUD or Federal grant funded contract executed by the Town contains the required contract clauses detailed within 2 CFR §200.326 and Appendix II.

14.0 CONTRACT ADMINISTRATION

14.1 General. When HUB or Federal grant funds are being used, the Town shall maintain a system of contract administration designed to ensure that Contractors perform in accordance with their contracts. These systems shall provide for inspection of supplies, services, or construction, as well as monitoring contractor performance, status reporting on major projects including construction contracts, and similar matters. For cost-reimbursement contracts, costs are allowable only to the extent that they are consistent with the cost principles in HUD Handbook 2210.18.

15.0 SPECIFICATIONS

15.1 General. All specifications shall be drafted so as to promote overall economy for the purpose intended and to encourage competition in satisfying the Town's needs. Specifications shall be reviewed prior to issuing any solicitation to ensure that they are not unduly restrictive or represent unnecessary or duplicative items. Function or performance specifications are preferred. Detailed product specifications shall be avoided whenever possible. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. For equipment purchases, a lease versus purchase analysis should be performed to determine the most economical form of procurement.

15.2 Limitation. The following types of specifications shall be avoided:

15.2.1 Geographic restrictions not mandated or encouraged by applicable Federal law (except for A/E contracts, which may include geographic location as a selection factor if adequate competition is available);

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- 15.2.2 Brand name specifications (unless the specifications list the minimum essential characteristics and standards to which the item must conform to satisfy its intended use).

Nothing in this procurement policy shall preempt any State licensing laws. Specifications shall be reviewed to ensure that organizational conflicts of interest do not occur.

16.0 APPEALS AND REMEDIES

- 16.1 **General.** It is Town policy to resolve all contractual issues informally and without litigation. Disputes will not be referred to HUD unless all administrative remedies have been exhausted. When appropriate, a mediator may be used to help resolve differences.
- 16.2 **Appeals Procedure.** The Town has adopted a bid protest/appeal procedure for construction contracts of \$10,000 or any contract over \$5,000. The procedure is that the Town Manager, applicable Department Head(s) and the Contractor(s) involved in the dispute/appeal hold a conference and attempt to resolve the dispute/appeal. If the dispute/appeal cannot be resolved then the dispute/appeal must be referred to the Town Council for consideration.
- 16.2.1 **Bid Protest.** Any actual or prospective contractor may protest the solicitation or award of a contract for serious violations of the principles of this Policy. Any protest against a solicitation must be received before the due date for the receipt of bids or proposals, and any protest against the award of a contract must be received within ten (10) calendar days after the contract receives notice of the contract award, or the protest will not be considered. All bid protests shall be in writing, submitted to the Town Manager or designee, who shall issue a written decision on the matter. The Town Manager may, at his/her discretion, suspend the procurement pending resolution of the protest if the facts presented so warrant.
- 16.2.2 **Contractor Claims.** All claims by a contractor relating to performance of a contract shall be submitted in writing to the Purchasing Agent for a written decision. The contractor may request a conference on the claim. The Purchasing Agent's decision shall inform the contractor of its appeal rights to bring the claim to the Town Council.

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17.0 ASSISTANCE TO SMALL AND OTHER BUSINESSES

17.1 Required Efforts. Consistent with Presidential Executive Orders 11625, 12138, and 12432, and Section 3 of the HUD Act of 1968, all feasible efforts shall be made to ensure that small and minority-owned businesses, women's business enterprises, and other individuals or firms located in or owned in substantial part by persons residing in the area of the HACM project are used when possible. Such efforts shall include, but shall not be limited to:

- 17.1.1 Including such firms, when qualified, on solicitation mailing lists;
- 17.1.2 Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- 17.1.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- 17.1.4 Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- 17.1.5 Using the services and assistance of the Small Business Administration, and the Minority Business Development Town of the Department of Commerce;
- 17.1.6 Including in contracts, to the greatest extent feasible, a clause requiring contractors, to provide opportunities for training and employment for lower income residents of the project area and to award subcontracts for work in connection with the project to business concerns which provide opportunities to low-income residents, as described in 24 CFR §135 (so-called Section 3 businesses); and
- 17.1.7 Requiring prime contractors, when subcontracting is anticipated, to take the positive steps listed above.

17.2 Definitions.

- 17.2.1 A small business is defined as a business that is: independently owned; not dominant in its field of operation; and not an affiliate or subsidiary of a business dominant in its field of operation. The size standards in 13 CFR §121 should be used to determine business size.

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- 17.2.2 A minority-owned business is defined as a business which is at least 51% owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. Minority group members include, but are not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.
- 17.2.3 A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.
- 17.2.4 A "Section 3 business concern" is as defined under 24 CFR §135.
- 17.2.5 A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the DOL in 20 CFR §654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

18.0 TOWN COUNCIL APPROVAL OF PROCUREMENT ACTIONS

- 18.1 **Appointment.** The Town Council shall designate a person or persons to act as the Purchasing Agent so as to exercise the powers and duties set forth herein, in R.I.G.L., chapter 45-55; and in the rules and regulations adopted in this policy.
- 18.2 **Authority.** The Purchasing Agent in the amount not to exceed \$10,000 for construction purchases and \$5,000 for any other purchases. The Purchasing Agent is responsible for ensuring that any procurement policies and procedures adopted are appropriate for the Town. All procurements that exceed \$10,000 for construction and \$5,000 for any other purchase must have approval from the Town Council prior to award and/or contract execution.

19.0 DELEGATION OF CONTRACTING AUTHORITY

- 19.1 **Delegation.** While the Purchasing Agent is responsible for ensuring that the Town's procurements comply with this Policy, the Purchasing Agent may delegate in writing all procurement authority as is necessary and appropriate to conduct the business of the Town.

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19.2 **Procedures.** Further, and in accordance with this delegation of authority, the Purchasing Agent shall, where necessary, establish operational procedures (such as a procurement manual or standard operating procedures) to implement this Policy. The Purchasing Agent shall also establish a system of sanctions for violations of the ethical standards described in Section 3.0 herein, consistent with Federal, State, or local law.

20.0 DOCUMENTATION

20.1 **Required Records.** The Town must maintain records sufficient to detail the significant history of each procurement action. These records shall include, but shall not necessarily be limited to, the following:

20.1.1 Rationale for the method of procurement (if not self-evident);

20.1.2 Rationale of contract pricing arrangement (also if not self-evident);

20.1.3 Reason for accepting or rejecting the bids or offers;

20.1.4 Basis for the contract price;

20.1.5 A copy of the contract documents awarded or issued and signed by the Purchasing Agent;

20.1.6 Basis for contract modifications; and

20.1.7 Related contract administration actions.

20.2 **Level of Documentation.** The level of documentation should be commensurate with the value of the procurement.

20.3 **Record Retention.** Records are to be retained for a period of three years after final payment and all matters pertaining to the contact are closed.

21.0 DISPOSITION OF SURPLUS PROPERTY

21.1 **General.** Property no longer necessary for the Town's purposes (non-real property) shall be transferred, sold, or disposed of in accordance with applicable Federal, state, and local laws and regulations.

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22.0 FUNDING AVAILABILITY

22.1 **General.** Before initiating any contract, the Town shall ensure that there are sufficient funds available to cover the anticipated cost of the contract or modification.