

# **TOWN OF HOWEY-IN-THE-HILLS PURCHASING POLICY**

## **Section 1: PURPOSE**

This policy is adopted to ensure that commodities and services are obtained efficiently and effectively in free and open competition and through the use of sound procurement practices. All Town of Howey-in-the-Hills (“Town”) staff and other persons with designated responsibility for purchasing are responsible for ensuring compliance with this policy and with all applicable federal and state laws and regulations.

## **Section 2: APPLICATION OF POLICY**

This policy shall apply to all contracts or agreements, whether oral or written, for the procurement of any materials, supplies, services, construction and equipment entered into by or on behalf of the Town after the effective date of this policy (“Purchases”).

## **Section 3: PURCHASING OFFICER; DEPARTMENT DIRECTORS; BUDGET AND CASH FLOW LIMITATIONS**

The Town Manager or his/her designee shall serve as the Purchasing Officer of the Town for all Purchases, and may establish procedures for the approval of and documentation of Purchases as follows:

- “Department Directors” (Chief of Police, Public Services Director, Town Clerk and Library Director), may make Purchases according to the threshold Purchase limits as set forth in Section 4 below.
- No Purchase may be made unless such Purchase is within the budgeted amount authorized by the Town Council for the relevant department.
- The Town Manager may impose further restrictions upon Purchases if reasonably required by cash flow limitations.
- Emergency Purchases. The Town Manager shall have the authority to waive any of the provisions of this policy, and may make emergency purchases in any amount to alleviate a situation in which there is a threat to health, welfare, or safety under certain conditions defined as an emergency by the Federal Government, the State of Florida, or the Town, that does not allow time for normal, competitive purchasing procedures.
- Cooperative Purchases. The Town Council may enter into a cooperative purchasing arrangement, (also known as “piggybacking,”) with other governmental agencies and agencies qualified by the State for government purchasing for all services, supplies, materials, and equipment to be used by the Town, provided the vendor extends the same terms and conditions of the contract to the town.

## **Section 4: PURCHASING AND CONTRACT AWARD PROCEDURES** **Section 4.01: PURCHASING CATEGORIES; THRESHOLD AMOUNTS**

Except Sole Source Purchases (Section 4.06) and Cooperative Purchasing and Council-Approved Contracts (Section 4.07), all Purchases and contract awards are to be made

subject to the provisions of the appropriate Section according to the following threshold amounts:

- A. Small Purchases (Section 4.02) any amount under \$5,000.00.
- B. Purchasing Quotes (Section 4.03) \$5,000.01 to \$50,000.00.
- C. Competitive Sealed Bids and Requests for Proposals (Section 4.04 & 4.05) \$50,000.00 or more.

#### **Section 4.02: SMALL PURCHASES**

Purchases of commodities, equipment and services which cost \$5,000.00 or less ("Small Purchases"), do not require solicitation of quotes or bids. Small purchases may be authorized by the Department Director.

#### **Section 4.03: PURCHASING QUOTES**

The purchase of goods and services which cost within the range authorized for purchasing quotes in Section 4.01 require competitive quotations from three or more vendors, if available. Purchasing quotes may be obtained by the Department Director and awarded by the Purchasing Officer.

#### **Section 4.04: COMPETITIVE SEALED BIDS**

- A. **Conditions For Use.** Where price, not qualifications, is the basis for a contract award, the Town Council shall award by competitive sealed bidding. All contracts for purchases of a single item, services, or multiple items when the estimated aggregate amount exceeds the thresholds as described in Section 4.01 must be made via Competitive Sealed Bid in accordance with this policy and shall be publicly opened. The Town Council shall award bids for \$50,000 and above, per the threshold outlined in Section 4.01C.
- B. **Invitation to Bid.** An invitation to bid shall be issued and shall include specifications, all contractual terms and conditions, and the place, date, and time for opening or submittal. No later than five (5) working days prior to the date for receipt of bids may a vendor make a written request to the Town for interpretations or corrections of any ambiguity, inconsistency or error which the vendor may discover. All interpretations or corrections will be issued as addenda.
- C. **Public Notice.** Public notice shall be provided in at least one of the following: newspaper of general circulation, the Town's website, or Demandstar, at least ten (10) calendar days prior to bid opening. Notice shall give the date, time, and place set forth for the submittal of proposals and opening of bids.
- D. **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the solicitation. The amount of each

bid, and other such relevant information as may be deemed appropriate, together with the name of each bidder, and all witnesses shall be recorded. The record and each bid shall be open to public inspection.

- E. **Bid Acceptance and Evaluation.** Upon opening, bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Following acceptance, the Purchasing Officer or his/her designee shall evaluate the bids based on the requirements set forth in the solicitation.
- F. **Bid Agenda Item.** All competitive bids exceeding \$50,000 shall be submitted to Town Council for approval. For bids that the Town Council will award, the Purchasing Officer or his/her designee, after evaluation, will prepare a recommendation and shall place the item on the agenda of the Town Council.
- G. **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written or electronic notice received in the office designated in the Invitation for Bids prior to the time set for 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 the bid price 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 his bid if:
- (1) the mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
  - (2) 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.
- H. **Award.** The Town Council shall award the contract with reasonable promptness to the most responsible and responsive bidder whose bid meets the requirements and criteria set forth in the solicitation. The Town reserves the right to waive any informality in bids and to make an award in whole or in part, or cancel the solicitation when in the best interest of the Town. Any requirement which is waived must be documented and kept in the file.
- (1) **Notice of Intended Award.** The Town Council shall award the contract by written notice. Every procurement of contractual services shall be evidenced by a written agreement. Notice of the intended award shall follow the process specified in the solicitation.

(2) **Notice of Right to Protest.** All notices of decision or intended decisions shall contain the statement: “Failure to file a protest within the time prescribed in Section 4.08 of the Purchasing Policy of the Town of Howey--in--the--Hills shall--constitute a waiver of proceedings under that section of this Policy”.

(3) **Bond.** If required in the solicitation, the most responsible bidder shall give a bond with an approved surety in such sum as the nature and character of the work demand. The bond shall be subject to the approval of the Town Council.

**I. Cancellation of Invitations for Bids.** An invitation for bids or other solicitation may be cancelled, or any or all bids may be rejected in whole or in part when it is in the best interest of the Town, as determined by a Department Director, the Purchasing Officer, or the Town Council, as applicable. Notice of cancellation shall be posted on the Town’s website and 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.

**J. Disqualification of Vendors.** For any specific bid, vendors may be disqualified by the Purchasing Officer, for the following reasons:

- (1) Failure to respond to bid invitation three consecutive times within the last twelve (12) months period.
- (2) Failure to update the information on file including address, project or service, or business description.
- (3) Failure to perform according to contract provisions.
- (4) Conviction in a court of law of any criminal offense in connection with the conduct of business.
- (5) Clear and convincing evidence of a violation of any Federal or State anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
- (6) Clear and convincing evidence that the vendor has attempted to give a Town employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Town’s purchasing activity.
- (7) Failure to execute a sworn statement on Public Entity Crimes Statement in compliance with subsection 287.133(3)(a) of the Florida Statutes.
- (8) Other reasons deemed appropriate by the Town.

#### **Section 4.05: COMPETITIVE SEALED PROPOSALS**

For all contracts exceeding \$50,000, whether for goods, general services, or professional services, the Town shall solicit Competitive Sealed Proposals through a Request for Proposal (RFP). The process applies uniformly, except where otherwise required by the Consultants’ Competitive Negotiation Act (CCNA) under Section 287.055, Florida Statutes.

**A. Applicability.** Professional services (architecture, engineering, landscape architecture, and land surveying) are governed by CCNA and awarded based on qualifications. All

other goods and services that are evaluated based on a combination of qualifications and other stated factors.

**B. General Procedure for All Competitive Sealed Proposals.**

- (1) **Request for Proposals (RFP).** The Purchasing Officer shall prepare an RFP including:
  - (a) Scope of work and required qualifications;
  - (b) Evaluation criteria and their relative importance;
  - (c) Submission requirements and deadlines.
- (2) **Public Notice.** The RFP shall be publicly advertised through at least one of the following:
  - (a) Newspaper of general circulation;
  - (b) The Town's website;
  - (c) DemandStar or similar procurement platform.
- (3) **Receipt and Opening of Proposals.** Proposals shall be opened publicly by the Purchasing Officer or designee, in the presence of one or more witnesses. A record of proposers and observers shall be maintained and available for public inspection.
- (4) **Revisions and Clarification.** As applicable, responsible offerors may be invited to participate in discussions to clarify proposals or submit best and final offers. All offerors shall be treated equitably during this phase.

**C. Qualifications-Based Selection.** For contracts governed by the CCNA:

- (1) **Project Scope Document.** Prior to issuing an RFP, the Purchasing Officer shall prepare a written summary of project requirements, including purpose, objectives, timeline, estimated cost, and desired qualifications. This document shall be included with the RFP submission to Council.
- (2) **Evaluation Team and Shortlisting**
  - (a) The Town Manager shall appoint an Evaluation Team.
  - (b) Written submittals will be reviewed and ranked.
  - (c) At least three firms shall be shortlisted for formal interviews based on demonstrated qualifications.
- (3) **Council Approval.** The Evaluation Team shall submit a ranked list of the most qualified firms to the Town Council for approval prior to contract negotiations.
- (4) **Negotiation Sequence.** The Purchasing Officer shall attempt to negotiate a fair and reasonable contract with the top-ranked firm. If unsuccessful, negotiations will proceed in order of ranking until an agreement is reached or the process is terminated.
- (5) **Reuse of Existing Plans.** No RFP or selection process is required for CCNA projects that reuse existing plans from a prior project.

**D. Price-Based Selection.** For all other proposals not governed by CCNA, evaluation is based on price and other factors disclosed in the RFP. After proposal evaluation, the Purchasing Officer shall prepare a written recommendation. The recommendation shall be placed on the Council agenda for approval. Contracts are awarded to the responsive and responsible offeror whose proposal is most advantageous to the Town.

- E. **Award and Documentation.** Awards over \$50,000 shall be made by the Town Council unless delegated otherwise. A written record of evaluations, rankings, negotiations, and final award shall be retained in accordance with public records requirements. The Purchasing Officer may cancel or postpone proposal openings when necessary, with proper public notice.

#### **Section 4.06: SOLE SOURCE PURCHASES**

- A. **Sole Source Certification.** A contract may be awarded for a supply, service, material, equipment or construction item(s) without competition when the Purchasing Officer certifies in writing, after conducting a good faith review of available sources, that there is only one available source for the required material, supply, service equipment, or construction item(s). Such awards will be made within the authorized procurement limits. When a purchase exceeds **\$50,000**, the item will be placed on the agenda for Town Council approval and clarification that the vendor has been determined to be a sole source.
- B. **Additional Purchases from Certified Sole Source.** The Purchasing Officer and/or Department Director, as applicable, may, after initial sole source certification, make additional purchases from a sole source vendor for not more than one (1) year or until such time as contrary evidence is presented regarding sole source eligibility, whichever period is less.

#### **Section 4.07: COOPERATIVE PURCHASING AND COUNCIL-APPROVED CONTRACTS**

- A. **State Contracts.** The Purchasing Officer is authorized to purchase goods or services for up to \$50,000 from authorized vendors listed on the respective state contracts of the Department of Management Services, as well as any council-approved contracts, including the Library of Continuing Professional Services. The provisions of sections 4.01, 4.02, 4.03 and 4.04 shall not apply to such purchases. All other requirements of this policy shall apply. Any purchase over \$50,000 requires approval by Town Council.
- B. **Other Governmental Units.** The Purchasing Officer shall have the authority to join with other units of government in cooperative purchasing ventures when the best interest of the Town would be served thereby, and the same is in accordance with this policy and with Town and State law.
- C. **“Piggyback” Contracts.** The Purchasing Officer may acquire goods or services by utilizing contracts previously awarded by federal, state, or other eligible governmental entities, commonly referred to as “piggybacking,” without requiring a separate Town solicitation process, provided the following conditions are met:

- (1) **Eligibility.** The contract must:
  - (a) Be the result of a formal competitive solicitation process (e.g., Invitation for Bids, Request for Proposals, or Request for Qualifications);
  - (b) Be in active and good standing at the time of purchase.
- (2) **Eligible Contract Types.** Examples of contracts that may qualify include:
  - (a) Town-awarded contracts with broad departmental applicability;
  - (b) Contracts established by recognized governmental cooperatives;
  - (c) State or county contracts accessible to local government agencies;
  - (d) Intergovernmental agreements with language permitting shared use.
- (3) **Limitations.** Piggybacking shall not be used when:
  - (a) The original contract was awarded under sole source, emergency, or non-competitive methods;
  - (b) The contract covers professional services requiring department-specific qualifications;
  - (c) The contract lacks language supporting cooperative or shared use;
  - (d) The intended use materially changes the contract's original scope or terms.
- (4) **Authorization and Documentation.** Prior to making a purchase, departments must obtain Purchasing Officer approval.

#### **Section 4.08: BID PROTEST**

- A. Right to Protest.** A prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of contract may protest to the Town Council. Protesters shall seek resolution of their complaints initially with the Purchasing Officer and secondly with the Town Council.
- B. Filing a Protest.** Any person who is affected adversely by the decision or intended decision of the Town shall file with the Purchasing Officer a notice of protest in writing within 72 hours after the posting of the bid tabulation or after receipt of the notice of intended decision and file a formal written protest within ten (10) calendar days after the date he/she filed the notice of protest. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings under this Section. A written protest is filed with the Town when it is delivered to and received in the office of the Purchasing Officer.
  - (1) The notice of protest shall contain at a minimum: the name of the bidder; the bidder's address and phone number; the name of the bidder's representative to whom notices may be sent; the name and bid number of the solicitation; and a brief factual summary of the basis of the protest.
  - (2) The formal written protest shall: identify the protestant and the solicitation involved; include a plain, clear statement of the grounds on which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the protestant deems applicable to such grounds; and specifically request the

relief to which the protestant deems himself entitled by application of such authorities to such grounds.

- (3) The protestant shall mail a copy of the notice of protest and the formal written protest to any person with whom he/she is in dispute.

**C. Settlement and Resolution.** The Purchasing Officer shall, within fourteen (14) days of the formal written protest, attempt to resolve the protest prior to any proceedings arising from the position.

**D. Protest Proceedings.** If the protest cannot be resolved by mutual agreement, the Purchasing Officer shall conduct or designate another to conduct a protest proceeding pursuant to the following procedures.

**(1) Protest Proceeding Procedures**

- (a) The presiding officer shall provide reasonable notice of the proceedings to all substantially affected persons. Petitions to intervene will be summarily denied if such notice is not received or the protest is dismissed.
- (b) At or prior to the protest proceeding, the protestant may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.
- (c) In the proceeding, the protestant, or his/her representative or counsel, may also make an oral presentation of his evidence and arguments. However, neither direct, nor cross examination of witnesses shall be permitted, although the presiding officer may make whatever inquiries he/she deems pertinent to a determination of the protest.
- (d) The judicial rules of evidence shall not apply and the presiding officer shall base his/her decision on such information given during the proceeding upon which reasonable prudent persons rely in the conduct of their affairs.
- (e) Within seven (7) working days of the conclusion of the proceeding, the presiding officer shall render a decision which sets forth the terms and conditions of any settlement reached. Such decision of the presiding officer shall be conclusive as to the recommendation of the Town Council.
- (f) Any party may arrange for a court reporter to record the proceedings. Such party shall bear the expense of the court reporter.

**(2) Intervenor.** The participation of intervenors shall be determined by the terms of the order issued in response to a petition to intervene.

**(3) Time Limits.** The time limits in which protests must be filed as provided herein may be altered by specific provisions in the invitation for bids or request for proposals documents.

**(4) Entitlement to Costs.** In no case will the protesting bidder or offeror be entitled to any costs incurred with the solicitation, including bid preparation costs and attorney's fees.



- E. Stay of Procurement During Protests.** In the event of a timely protest under Subsection B of this Section, the Purchasing Officer shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or unless the Town Council makes a determination that the award of a contract without delay is necessary to protect the substantial interests of the Town.

## **Section 5: CONTRACT ADMINISTRATION**

### **Section 5.1: CONTRACT PROVISIONS**

- A. Standard Contract Clauses and Their Modification.** The Town, after consultation with the Town Attorney, may establish standard clauses for use in Town contracts. However, the Purchasing Officer may, upon consultation with the Town Attorney, vary any such standard contract clauses for any particular contract.
- B. Contract Clauses.** All Town contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Officer, after consultation with the Town Attorney, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:
- (1) The unilateral right of the Town to order, in writing, changes in the work within the scope of the contract;
  - (2) The unilateral right of the Town to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;
  - (3) Variations occurring between estimated quantities or work in contract and actual quantities;
  - (4) Defective pricing;
  - (5) Time of performance and liquidated damages;
  - (6) Specified excuses for delay or nonperformance;
  - (7) Termination of the contract for default;
  - (8) Termination of the contract in whole or in part for convenience of the Town;
  - (9) Suspension of work on a construction project ordered by the town;
  - (10) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract;
    - (a) when the contract is negotiated;
    - (b) when the contractor provides the site or design; or
    - (c) when the parties have otherwise agreed with respect to the risk of differing site conditions;
  - (11) Value engineering proposals;
  - (12) Remedies;

- (13) Access to records/retention records;
- (14) Environmental compliance; and (15) Prohibition against contempt fees.
- (16) Insurance to be provided by contractor covering employee, property damage, liability and other claims, with requirements of certificates of insurance and cancellation clauses.
- (17) Bonding requirements as set by the Town Council.
- (18) Causes of and authorization for suspension of contract for improper contractor activity.

### **Section 5.3: CHANGE ORDERS/CONTRACT AMENDMENTS**

Change orders and contract amendments, which provide for the alteration of the provisions of a contract, may be approved by an appropriate person based upon the dollar value of the change or amendment. The purchasing categories thresholds designated in Sections 4.01 shall govern the appropriate level of approval.

### **Section 6: RIGHTS OF TOWN COUNCIL**

Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Town Council, in the best interests of the Town, to reject all bids received in response to a request, to determine in its sole discretion the responsiveness and responsibility of any bidder, to approve and authorize or to enter into any contract it deems necessary and desirable for the public welfare, or to vary the requirements of the policy in any instance when desirable for the public good.

### **Section 7: TOWN PROCUREMENT RECORDS**

- A. **Contract File.** All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the Town in a contract file.
- B. **Retention of Procurement Records.** All procurement records shall be retained and disposed of by the Town in accordance with records retention guidelines and schedules established by the State of Florida.

### **Section 8: ETHICS IN PUBLIC CONTRACTING**

#### **Section 8.1: CRIMINAL PENALTIES**

To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of the State Criminal Code, they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

## **Section 8.2: EMPLOYEE CONFLICT OF INTEREST**

- A. Participation.** It shall be unethical for any Town employee, officer or agent to participate directly or indirectly in the procurement or administration of a contract. A conflict of interest would arise when:
- (1) The Town employee, officer or agent;
  - (2) Any member of his immediate family;
  - (3) His or her partner; or
  - (4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements.
- B. Blind Trust.** A Town employee, officer or agent or any member of their family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest regarding matters pertaining to that financial interest.

## **Section 8.3: CONTEMPORANEOUS EMPLOYMENT PROHIBITED**

It shall be unethical for any Town employee who is participating directly or indirectly in the procurement process to become or to be, while such a Town employee, the employee of any person contracting with the Town.

## **Section 8.4: USE OF CONFIDENTIAL INFORMATION**

It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

## **Section 8.5: GRATUITIES AND KICKBACKS**

- A. Gratuities.** It shall be unethical for any person to offer, give, or agree to give any Town employee, officer or agent or for any Town employee, officer or agent to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.
- B. Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

## **Section 8.6: SANCTIONS**

- A. Employee Sanctions.** Upon violation of the ethical standards by an employee, officer, or agent, the Town or other appropriate authority may:
- (1) impose one or more appropriate disciplinary actions as defined in the Town Personnel Rules and regulations, up to and including termination of employment;
  - (2) request investigation and prosecution.
- B. Non-employee Sanctions.** The Council may impose any one or more of the following sanctions on a non-employee for violation of the ethical standards:
- (1) Written warnings;
  - (2) Termination of contracts; or
  - (3) Any other sanction available by law.