

**BOARD OF COMMISSIONERS  
FOR THE  
TOWN OF UPPER MARLBORO**

ORDINANCE: 2022-06  
SESSION: Regular Town Meeting  
INTRODUCED: XXXXXXXXXX

**AN ORDINANCE GOVERNING THE PURCHASE AND RELATED TO THE USE OF  
COMPETITIVE BIDDING, PURCHASING AND CONTRACTING FOR ALL TOWN  
PROCUREMENTS.**

**WHEREAS**, pursuant to LG Art., § 5-202 of the State Code and § 82-16(1) of the Town Charter, the Board of Commissioners shall have the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or this charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights, and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of the Town and visitors thereto and sojourners therein; and

**WHEREAS**, pursuant to Md. Ann. Code, Article 23A, § 2, the Town of Upper Marlboro (hereinafter, "the Town") has the general authority to pass such ordinances not contrary to the Constitution of Maryland, public general law, and

**WHEREAS**, the Charter of the Town of Upper Marlboro (the "Charter") in Section 82-56 (Purchasing and Contracts) mandates that the Board of Commissioners adopt an ordinance consistent with said Section, and

**WHEREAS**, the Board finds it in the best interest of the Town of Upper Marlboro to enact a new and comprehensive procurement ordinance as provided herein.

**NOW, THEREFORE**, the Board of Commissioners of the Town of Upper Marlboro, State of Maryland, does enact Ordinance 2022-XX:

**SECTION 1. Purpose.**

The purpose of this ordinance is to:

- (a) Provide for fair and equitable treatment of all persons involved in public purchasing by the Town;
- (b) Ensure the maximum purchasing value of public funds in procurement; and

(c) Provide safeguards for maintaining a procurement and disposition system of quality and integrity.

## **SECTION 2. Definitions.**

For the purpose of this chapter, the following words and phrases shall have the meanings set forth in this section:

- A. Public Improvement -Any improvement undertaken by the Town, including construction or reconstruction in whole or in part of any road, bridge, street, building or water, sewer or storm drain facility or any similar structure or facility necessary in carrying out the activities of the Town government.
- B. Contractual Services - Includes all types of services required by the Town, but not furnished by its own employees, except professional services which are by their nature not subject to competition.
- C. Purchasing Agent- The Town Administrator or Department Head, as applicable.
- D. Supplies - Includes all commodities, materials, equipment and all other articles or things furnished to be used by any department or Town official or employee.

## **SECTION 3. Specific Regulations.**

- A. Under Twenty Thousand Dollars (\$20,000.00). Expenditures for supplies, materials, equipment, construction of public improvements or contractual services involving less than Twenty Thousand Dollars (\$20,000.00) shall be made by a department head, provided the amount of the procurement is within the budget.
- B. Twenty Thousand Dollars (\$20,000.00) and above. Except as otherwise provided in this section, expenditures for supplies, materials, equipment, construction of public improvements or contractual services involving Twenty Thousand Dollars (\$20,000.00) or more, shall be made as provided in §3-4.
- C. Sole-source procurement. A contract involving Twenty Thousand Dollars (\$20,000.00) or more may be awarded without competitive bidding when the Town Administrator determines, after a review of available resources and the receipt of a written recommendation of the department head where applicable, that there is only one source for the required item or service. The Town Administrator or department head shall negotiate, as appropriate, regarding price, delivery, and terms. Sole-source procurement shall be approved by the Board.
- D. Professional Services.
  - 1. For architectural, engineering, surveying, and planning services, anticipated to be greater than Twenty Thousand Dollars (\$20,000.00), the Town Administrator shall obtain at least three (3) proposals when practical. The Town Administrator shall submit the proposals, with a recommendation, to the Board for its determination. Services anticipated to be in amounts less than Twenty Thousand Dollars (\$20,000.00) shall be subject to the provisions of Subsection A hereof.

2. All contracts for other professional services, such as accounting, auditing, legal and insurance, anticipated to be in excess of Twenty Thousand Dollars (\$20,000'.00) shall not be subject to competitive bid requirements but shall be approved on an individual basis by the Board. Services below Twenty Thousand Dollars (\$20,000.00) shall be subject to the provisions of Subsection A hereof.
- E. No anticipated contract or purchase shall be divided to avoid the requirements of §3-2.
- F. When the advertisement for sealed bids is impractical, unreasonable, or disadvantageous to the Town, the Purchasing Agent may institute an alternative method by utilizing the open market. The Purchasing Agent shall obtain at least three (3) price quotes or offers and present them to the Board with a recommendation. The Board may reject the bids or offers or accept such as is in the best interests of the Town.

### **Emergency purchases.**

- A. An emergency for purposes of this chapter shall be deemed to exist when a breakdown in equipment, machinery, and/or a threatened curtailment of essential services or a dangerous condition develops, or when any unforeseen circumstance arises causing curtailment or diminution of an essential services.
- B. In cases or emergency, the Purchasing Agent may directly purchase the required supplies or services. The Purchasing Agent shall, whenever practical, obtain three (3) competitive informal bids and order from the lowest responsible bidder. The Mayor shall be notified of the emergency, and a written record shall be prepared as promptly as possible concerning the circumstances of the emergency. A tabulation of any bids and the amount expended shall be presented to the Mayor and Board at its next meeting.
- C. The Purchasing Agent shall endeavor to reduce emergency purchases to a minimum by use of service contracts or other arrangements for standby services.

### **Written Contracts.**

All supplies, contractual services, and capital improvements, where the estimated cost exceeds Twenty Thousand Dollars (\$20,000.00), or a multi-year contract, shall be purchased by formal written contract with the lowest responsible bidder as detailed in XX. The following procedures shall be observed:

- A. The Purchasing Agent shall cause appropriate written specifications to be prepared. The Town may, but is not required to, use "value engineering" and/or "design/build" clauses in specifications and contracts for construction projects of sufficient size to offer reasonable opportunities for cost reduction.
- B. Advertisement to prospective bidders shall be given in at least one issue of a newspaper having general circulation in the Town at least fifteen (15) days before the date for the opening of bids. The Purchasing Agent may also advertise in any publication, website or other platform which is particular to the proposed project. Such advertisement shall include a general description of the supplies or contractual services involved or the capital improvement to be undertaken and shall state where bid forms and specifications may be obtained and the place and time of opening bids.

- C. Bids shall be opened publicly by the Purchasing Agent and recorded by the Town Clerk. The Purchasing Agent shall review and evaluate the bids then make a recommendation to the Board at its next meeting. The Board, by motion, shall award the contract to the lowest or best responsible bidder, except that the Board may reject all bids, parts of all bids or all bids for any one or more items included in the proposed contract, or waive technical defects whenever, in its judgment, the public interest will be served thereby.
- D. All contracts shall be signed on behalf of the Town by the Mayor or Purchasing Agent.

### **Negotiated Adjustments.**

If the lowest responsible bid exceeds the available funds as certified by the Clerk-Treasurer, the Town Administrator is authorized to negotiate an adjustment of the bid price in order to bring the bid within the amount of available funds when:

- A. This can be achieved without materially changing the scope of the procurement; and
- B. When time or economic considerations preclude solicitation of work of a reduced scope.
- C. Any such negotiated adjustment shall be based only on eliminating independent deductive items specified in the invitation for bids.
- D. Regardless of the amount by which the bid exceeds available funds, the Town may reduce the scope of the project during the budget year and allow for completion of the project in the next budget year.

### **Lowest responsible bidder.**

- A. In determining the lowest responsible bidder, the Town shall consider:
  - 1. The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
  - 2. Whether the bidder can perform the contract or provide the service promptly or within the time specified without delay or interference;
  - 3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
  - 4. The quality of performance of previous contracts or services, with the Town and/or with references provided;
  - 5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
  - 6. Whether the bidder is in arrears on debt or contract or is a defaulter on surety or whether the bidder's taxes or assessments are delinquent;
  - 7. Such other information as may have a bearing on the decision to award the contract.
- B. The Town reserves the right to disqualify any bidder, whether an individual or an entity, who has been debarred or suspended from consideration for contracts by Carroll County or any other State or local governmental entity.

### **Correction or withdrawal of bids.**

Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards based on such bid mistakes, may be permitted by the Town Administrator under the following conditions:

- A. Bids with mistakes discovered before bid opening may be modified or withdrawn upon written notice received by the Town before the time of bid opening;
- B. After bid opening, no changes in bid totals, prices, or other provisions prejudicial to the Town's interest or to fair competition shall be permitted;
- C. In lieu of bid correction, a bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
  - 1. The mistake is clearly evident on the face of the bid document; or
  - 2. The bidder submits evidence which adequately demonstrates that a mistake of fact was made.
- D. All decisions to permit bids to be corrected or withdrawn based on bid mistakes shall be at the Town's sole discretion.

#### **Cooperative Purchasing.**

In lieu of the competitive bid process outlined in §3-4, the Town Administrator may participate in cooperative or "piggyback" purchasing with other governments or intergovernmental associations, providing the public notice for the bid or contract is in accordance with the rules and regulations of the soliciting entity.

#### **Purchase order procedures.**

- A. All purchase orders will be signed by the Town Administrator or his or her
- B. Before any payment on a delivery will be made, the Purchasing Agent will ensure that the item or services have been delivered in good condition.

#### **Sale of any items, including supplies, equipment, and other materials.**

- A. The Purchasing Agent is authorized to exchange or trade-in obsolete equipment or surplus supplies in part of full payment for new supplies or equipment.
- B. The Purchasing Agent may sell any Town owned items, including supplies, equipment and other materials which are determined to be surplus, obsolete, or no longer needed.
- C. This provision shall not apply to materials sold to the general public, including commemorative items, collectible items, items marked with the Town Seal or name.

#### **Credit Cards.**

Certain employees may be authorized to utilize debit or credit card accounts established by the Town via Financial Policy adopted via Resolution. These accounts shall not be used for personal business by any such employee. Receipts and all other documentation of any credit card use shall be provided to the Town's finance team as soon as practicable after the use.

#### **Additional provisions.**

- A. Except as provided in §3-3, no elected official, department head, Town Administrator, or Clerk-Treasurer is authorized to enter into any contract for non-budgeted items for the Town without the approval of the Board, and the Town shall not be liable on any such contract.
- B. No elected official shall direct that the Town Administrator, or department head, procure goods or services from any specific person or entity except as provided by this chapter.

#### **SECTION 4. Severability.**

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this chapter, it being the intent of the Town that this chapter shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase or portion thereof.

#### **SECTION 5. Section Headings, Chapter Headings, Titles.**

Section headings, chapter headings, titles, etc., are for the purpose of description or ease of use and do not form a part of the text of this Ordinance or any Code or test adopted hereby.

#### **SECTION 6. Existing Liabilities.**

This Ordinance shall not discharge, impair, or release any contract, obligation, duty, liability, or penalty whatever existing on the date of its enactment. All suits and actions, both civil and criminal pending or which may hereafter be instituted for causes of action now existing or offenses already committed against any law or ordinance affected by the adoption of this Ordinance shall be instituted, proceeded with, and prosecuted to final determination and judgment as if this Ordinance had not become effective.

**SECTION 7.** BE IT FURTHER ENACTED AND ORDERED that this Ordinance shall take effect twenty (20) calendar days after its final approval by the Board of Commissioners of the Town of Upper Marlboro, Maryland.

**SECTION 8.** BE IT FURTHER ENACTED AND ORDERED that this Ordinance shall repeal and replace Ordinance 2011-02 passed on July 5<sup>th</sup>, 2011.

ATTEST:

THE TOWN OF UPPER MARLBORO

\_\_\_\_\_  
John Hoatson, Town Clerk

\_\_\_\_\_  
Sarah Franklin, President

Date: \_\_\_\_\_

\_\_\_\_\_  
Charles Colbert, Commissioner

\_\_\_\_\_  
Janice Duckett, Commissioner

\_\_\_\_\_  
Thomas Hanchett, Commissioner

\_\_\_\_\_  
Karen Lott, Commissioner

CERTIFICATION

I, the undersigned, hereby certify that I am the Town Clerk of the Town of Upper Marlboro and that the Board of Town Commissioners of the Town of Upper Marlboro at a public meeting at which a quorum was present adopted this Resolution, and that said Resolution is in full force and effect and has not been amended or repealed.

In witness whereof, I have hereunto set my hand and seal of the municipal corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
John Hoatson, Town Clerk