

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

ORDINANCE: 2022-06
SESSION: Regular Town Meeting
INTRODUCED: September 27, 2022

**AN ORDINANCE GOVERNING AND PROVIDING RULES AND REGULATIONS
REGARDING TOWN PURCHASES AND CONTRACTS CONSISTENT WITH SECTION
82-56 OF THE TOWN CHARTER, AS AMENDED**

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, 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 to provide rules and regulations regarding all Town purchases and contracts in keeping with good procurement practices and fiscal responsibility, and consistent with said Section, and

WHEREAS, contemporaneous with this ordinance, the Board has introduced for passage Charter Amendment Resolution No. 01-2022 that amends the finance provisions of the Charter including Section 82-56 (Purchasing and Contracts); 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 hereby ordain and enact Ordinance 2022-06 as follows:

PURCHASING AND CONTRACTS

SECTION 1. Purpose.

The purpose of this Ordinance is to:

(a) Provide for fair and equitable treatment of all persons involved in public purchasing and contracting administered by the Town;

- (b) Ensure the maximum purchasing value of public funds in procurement;
- (c) Provide safeguards for maintaining a procurement and disposition system of quality and integrity; and
- (d) Protect the Town from liability, or controversy and ensure legal sufficiency of written agreements entered into by the Town using municipal funds.

SECTION 2. Definitions.

For the purpose of this Ordinance, 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. *Employment Contract* – An agreement or term of hire that is extended from the Town as an employer to a Town employee to set the terms and conditions of their employment. While usually a written document, these agreements can also be verbal.
- C. *Contractual Services* – Includes all types of services required by the Town, but typically not furnished by its own employees, except professional services typically provided by independent contractors which are by their nature typically not subject to competition. Contracts may be oral or written.
- D. *Independent Contractor* – Includes professionals such as lawyers, accountants, contractors, subcontractors, surveyors, or auctioneers and the like who are in an independent trade, business, or profession in which they offer their services to the general public. An individual typically is an independent contractor if the Town has the right to control or direct only the result of the work and not what will be done and how it will be done.
- E. *Purchasing Agent* – The Town Administrator or Department Head, as applicable.
- F. *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 Ten Thousand Dollars (\$10,000.00)*. Expenditures for supplies, materials, equipment, construction of public improvements or contractual services involving less than Ten Thousand Dollars (\$10,000.00) shall be made by the Mayor, provided the amount of the procurement is appropriated within the approved budget and the term is for one year or less.
- B. *Ten Thousand Dollars (\$10,000.00) to Seventy-Five Thousand Dollars (\$75,000.00)*. Except as otherwise provided in this section, expenditures for supplies, materials, equipment, construction of public improvements or contractual services involving Ten Thousand Dollars (\$10,000.00) to Seventy-Five Thousand Dollars (\$75,000.00), shall be made by the Board without requiring any quotes, advertisements offering sale, proposals

or through the use of any other competitive procurement methods; however, a majority of the Board present and voting may elect to require any such competitive method so designated be used.

- C. *Seventy-Five Thousand Dollars (\$75,000.00) or above.* Except as otherwise provided in this section, expenditures for supplies, materials, equipment, construction of public improvements or contractual services involving Seventy-Five Thousand Dollars (\$75,000.00) or above, shall be subject to a competitive procurement process determined by the Board unless the Board, by supermajority vote of the full Board, finds another method of procurement, as prescribed by this Ordinance, to be more advantageous. The Board shall advertise for competitive sealed bids or another method of procurement in such manner as shall be prescribed by this Ordinance for all such competitive or other methods of procurement. All such competitively procured and other contracts exceeding Seventy-Five Thousand Dollars (\$75,000.00) shall be in writing and approved by the Board before becoming effective.
- D. *Sole-source procurement.* Notwithstanding anything herein to the contrary, a contract involving Seventy-Five Thousand Dollars (\$75,000.00) or more may be awarded without using competitive procurement methods when the Town Administrator under the supervision of the Mayor 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 reasonably available for the required item or service or there is limited time to efficiently and cost effectively accomplish both the competitive procurement process and the public service or project in need of completion. The Town Administrator or department head shall negotiate, as appropriate, regarding price, delivery, and terms. A sole-source procurement shall be approved by the Board.
- E. *Professional Services.*
 - 1. For architectural, engineering, surveying, and planning services or the like, anticipated to be Seventy-Five Thousand Dollars (\$75,000.00) or less, the Town Administrator shall obtain multiple proposals when practical. The Town Administrator shall submit one or more proposals, with a recommendation, to the Board for its determination. Services anticipated to be in amounts less than Ten Thousand Dollars (\$10,000.00) 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 Seventy-Five Thousand Dollars (\$75,000.00) shall be subject to competitive procurement requirements but shall be approved subject to use of an alternative method of procurement as prescribed by the Board on an individual basis by the Board.
- F. *Employment Contracts.* Employees are normally recruited and hired as “at-will” employees without an employment contract and the terms of employment are governed by the Employee Handbook and other personnel policies and regulations; however, the Board may enter into employment contracts with individuals having unique skills, experience or special training and education. Employment contracts and recruitment shall not be subject to the competitive bid requirements governed by this Ordinance but

shall be approved on an individual basis in accordance with the Charter and any other applicable law or policy.

- G. *Multiple Purchases.* No anticipated contract or purchase shall be divided to avoid the requirements of Subsection 3.B.
- H. *Awarding Contracts.* Competitively procured contracts shall be awarded to the bidder or offeror who offers the lowest or best bid or offer, quality of goods and work, time of delivery or completion, and responsibility of bidders or offerors being considered. The Board shall have the right to reject all bids, proposals or offers and re-advertise.
- I. *Alternative Methods.* 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 one (1) price quote or offer and present it to the Board with a recommendation. The Board may reject the method, or the bids or offers or accept such as is in the best interests of the Town.

SECTION 4. Emergency Purchases.

- A. An emergency for purposes of this ordinance 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.
- D. This Section shall be construed in harmony with Section 9 of Ordinance 2020-04 (Emergency Operations), as amended.

SECTION 5. Written Contracts.

All supplies, contractual services, and capital improvements, where the estimated cost exceeds Seventy-Five Thousand Dollars (\$75,000.00), or a multi-year contract, shall be purchased by formal written contract with the lowest responsible bidder as detailed in Section 7 unless another procurement process is authorized in accordance with the Charter. 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. The Town is encouraged to liberally include reasonable termination clauses for both cause and convenience in the contracts.

- 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, including advertisement on any State mandated online procurement system. 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. Sealed 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 for supplies, contractual services, and capital improvements shall be signed on behalf of the Town by the Mayor or Purchasing Agent.

SECTION 6. Negotiated Adjustments.

If the lowest responsible bid exceeds the available funds as certified by the 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.

SECTION 7. Lowest Responsible Bidder or Offeror.

- A. In determining the lowest responsible bidder and the lowest or best bid or offer, the Town shall consider:
 - 1. The ability, capacity, and skill of the bidder or offeror to perform the contract or provide the service required;
 - 2. Whether the bidder or offeror 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 or offeror;
 - 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 or offeror with laws and ordinances relating to the contract or service;
 6. Whether the bidder or offeror is in arrears on debt or contract or is a defaulter on surety or whether the bidder's or offeror'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 or offeror, whether an individual or an entity, who has been debarred or suspended from consideration for contracts by the Town or any other State or local governmental entity.

SECTION 8. Correction or Withdrawal of Bids or Proposals.

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

- A. Bids or proposals 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 or proposal opening, no changes in bid or proposal totals, prices, or other provisions prejudicial to the Town's interest or to fair competition shall be permitted;
- C. In lieu of bid or proposal correction, a bidder or proposer 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 proposal; or
 2. The bidder or proposer submits evidence which adequately demonstrates that a mistake of fact was made.
- D. All decisions to permit bids or proposals to be corrected or withdrawn based on bid or proposal mistakes shall be at the Town's sole discretion.

SECTION 9. Cooperative Purchasing.

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

SECTION 10. Purchase Order Procedures.

- A. All purchase orders will be signed by the Town Administrator or his or her designee.
- 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.

SECTION 11. 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 lieu 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.

Any personal property of the Town exceeding Ten Thousand Dollars (\$10,000.00) in estimated potential market value shall be approved as surplus for disposal by the Board.

- C. This provision shall not apply to materials sold to the general public, including commemorative items, collectible items, or items marked with the Town Seal or name.

SECTION 12. Credit Cards.

Certain employees may be authorized to utilize debit or credit card accounts established by the Town in accordance with the Financial Policy adopted by 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.

SECTION 13. Additional Provisions.

- A. Except as provided in Subsection 3.A, no elected official, department head, Town Administrator, Clerk, Treasurer or subordinate employee 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 a department head, to procure goods or services from any specific person or entity except as provided by this ordinance.
- C. Every contract, purchase or binding transaction shall be documented appropriately by written contract, receipt, invoice, voucher, or memoranda delivered in hard copy or electronically to the Town's finance team.

SECTION 14. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance 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 ordinance, it being the intent of the Town that this ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase or portion thereof.

SECTION 15. Section Headings, Titles.

Section headings, and 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 16. 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 17. 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, provided that Charter Amendment Resolution 01-2022 amending Section 82-56 of the Town Charter is effective; otherwise, this Ordinance will become effective immediately after said resolution becomes effective pursuant to State law.

SECTION 18. BE IT FURTHER ENACTED AND ORDERED that this Ordinance shall repeal and replace Ordinance 2011-02 passed on July 5th, 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 Ordinance, and that said Ordinance 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