

# *Purchasing Policy*

## ***LEGAL BASIS***

This Article identifies the purchasing procedure to be used by the Town of Merrimack and is incorporated into the Administrative Code in accordance with Town Charter 8-10.

## ***POLICY PURPOSE***

The goals of this policy are: to standardize the purchasing procedures of the Town of Merrimack, thereby securing the advantages of a centralized and uniform purchasing policy:

- To save the taxpayers money and increase public confidence in the procedures for municipal purchasing.
- To promote the fair and equitable treatment of all suppliers of goods and services.
- To foster interdepartmental cooperation and trust in the purchasing system.
- To establish the duties and responsibilities of Department Heads and Town Manager.

## ***DEFINITIONS***

**A) Approved vendors** – Vendors that have been prescreened and recommended by Department Heads to the Purchasing Agent, for their ability to provide products and/or services being sought by the department.

**B) Bid most advantageous to the Town** – A bid chosen on the totality of the requirements of the product or services. It may include but is not limited to price, planned use, quality, suitability of merchandise or service, and the service reputation of the vendor, and not necessarily the lowest bid received.

**C) Competitive bidding** – Transparent procurement method in which bids from competing contractors, suppliers, or vendors are invited by openly advertising the scope, specifications, and terms and conditions of the proposed contract whether through formal or informal bidding procedures.

**D) Informal bid** – A written or oral quotation obtained from a qualified vendor, not required to be opened publicly at a specified day, place, and time.

**E) Field purchase** – A purchase of supplies needed in small quantities for day-to-day operation made directly by a Department Head or his/her designated representative from any vendor.

**F) Formal bid** – A written quotation obtained in a fax, email or sealed envelope from an approved vendor or through advertisement and opened at a specific day, place, and time based on the specific specifications and criteria.

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**G) Cooperative purchase** – A purchase made by the Town in conjunction with or from another governmental or quasi-governmental agency.

**H) Purchase** – The buying, renting, leasing or otherwise acquiring supplies or services for a price.

**I) Services** – The lease or rental of all grounds, buildings, offices, space or equipment required by the Town, the repair or maintenance of all equipment or real property owned by or the responsibility of the Town, and all labor furnished to the Town by persons, firms, individuals or corporations not part of or connected with Town Government.

**J) Sole Source** – One and only one source that possesses a unique product having singular characteristics or performance capability.

**K) Specifications** – The standards, including quality, set by Department Heads as a guide to the Town Manager and as a measure of that which successful vendors shall achieve. Specifications shall be either technical specifications for bids, which shall state formulations as broadly as practicable, yet shall be specific enough to describe the requirements of the department; or non-technical specifications for bids, which shall state the quality required in general terms.

**L) Supplies** – All supplies, materials, and equipment.

### ***RESPONSIBILITY***

All employees authorized to make purchases for the Town shall be responsible for following the provisions outlined in this policy when making purchases with Town funds:

1. It shall be the Town Manager's responsibility to approve all purchase orders over \$10,000.
2. Department Heads shall have full authority to make departmental purchases of goods or services up to \$10,000 which are identified within the department's annual budget.
3. Purchase orders below \$10,000 shall be approved by the Finance Director. It shall be the responsibility of the Finance Director or designated staff to review all purchase order requests to ensure availability of funds.

### ***PROCEDURES***

#### **Purchase Order Requirements**

The Town of Merrimack's purchasing process begins at the departmental level. Each department shall identify its needs and initiate an electronic purchase requisition form. After all approvals are obtained, the Purchasing Agent shall convert the requisition into an electronic purchase order for final approval and funds to be available for spending.

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Department Head approval shall be required on all invoices prior to being processed by the Finance Division. Purchase orders shall be required on all items or services greater than \$500 for all departments. The purchase order shall be reviewed and processed by the Finance Director or designee.

### **Review and Control of Purchase Orders:**

Department Heads shall review all open purchase orders on a regular basis to determine the receipt/completion of goods/services and whether the purchase order should be amended or cancelled. The Finance Director shall review purchase orders on a quarterly or bi-annual basis to determine the status of all open encumbrances.

### **Blanket Purchase Orders:**

All purchases that are of a contractual nature or related to ongoing operational expenditures shall be assigned an annual blanket purchase order number. Vendors that fall under a blanket purchase order number shall use the specific number(s) on their invoices. The following ongoing obligations and/or purchases shall require an initial purchase order executed as referenced below:

1. **VEHICLE FUEL:** Initial delivery after start of contract year, (all subsequent orders shall reference the initial [blanket] order).
2. **CONTRACTS:** Contracts for consulting or maintenance services, solid waste disposal services and lease/rental agreements shall require an initial purchase order at the beginning of the contract period, covering the period of performance.

All non-contractual or non-reoccurring operational purchases shall require a purchase order number and the appropriate authorizing signatures as outlined in the responsibility section.

The Department Head shall be responsible for determining if a purchase order is required. However if there are purchases for which it is not clear whether a purchase order is required, the Department Head shall consult with the Finance Director and/or Town Manager for a final determination.

### **Competitive bidding** ***Requirements for Competitive Bidding***

The Town may by-pass the bid process using the State Contract Pricing for the item(s) purchased.

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### Competitive and Sealed/Emailed Bids:

#### Price Quotations:

1. PURCHASES BETWEEN \$1,001 AND \$3,500: For purchases between \$1,001 and \$3,500, the Purchasing Agent shall obtain a minimum of three (3) electronic, written, or verbal estimates for consideration. The Purchasing Agent shall present these estimates to the Finance Director and Department Head, along with his/her recommendation, for their approval. In the event less than three (3) estimates are available, evidence of an attempt to obtain them shall be attached to the purchase order.
2. PURCHASES BETWEEN \$3,501 AND \$10,000: For purchases between \$3,501 and \$10,000, the Purchasing Agent shall obtain a minimum of three (3) written or electronic estimates for consideration. The Purchasing Agent shall present these estimates to the Finance Director and Department Head, along with his/her recommendation, for their approval. In the event less than three (3) estimates are available; evidence of an attempt to obtain them shall be attached to the purchase order.
3. PURCHASES ABOVE \$10,000: For purchases having an estimated cost in excess of \$10,000 shall be bid pursuant to the competitive procurement guidelines (sealed/mailed bids) established in this policy below.
4. MULTIPLE UNIT PURCHASES LESS THAN ONE PURCHASE ORDER: For instances where multiple units of the same equipment or item are to be acquired, a purchase order shall be obtained if the total cost of the combined units is in excess of \$1,000. Under no circumstances may multiple individual purchases in succession for the same item be permitted.

NOTE: The above thresholds do not include shipping/freight costs.

#### **Sealed/Emailed Bids:**

1. **BID SPECIFICATIONS:** The Department Head or designee shall prepare specifications for bid items and shall submit the final specifications to the Purchasing Agent for review and solicitation of bids. Alterations in the technical specifications shall only be made with the concurrence of the Department Head. The Purchasing Agent shall provide a copy of the final bid package to the Department, indicating the bid date. As part of the specifications, the Department Head and Purchasing Agent should always include the following minimum items or requirements:
  - a. That bidders shall clearly identify the product or service for which they are bidding on all envelopes and email correspondence.

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- b. That bidders shall provide samples with the bid when requested. All samples shall be returned to the vendors after the bid completion.
- c. The terms of the contract, including effective dates, extension terms, termination clauses, and other applicable terminology.
- d. The party responsible for the freight and insurance charges, as well as how damaged goods shall be returned and the extent of guarantees.
- e. The Town reserves the right to reject any and all bids, re-bid, negotiate any contracts, award the contract to the bid which, in the Town's sole discretion, best serves the interests of the Town and waive any formalities in the bid process.
- f. That bidders have the opportunity to review the Town purchasing policies and that they agree to be bound by the terms and conditions set forth herein.
- g. A statement which requires bidders to submit documentation for all substitutions and exceptions and the Town's right to consider substitution of equivalent items and under what conditions.
- h. Minimum quantity and quality requirements specific enough to ensure the desired level of quality, but also flexible enough to elicit multiple bids.
- i. Language similar to the following shall be incorporated into all bid and contracts involving contracted services. Department Heads shall be responsible for obtaining the related insurance certifications and indemnification policies before any contract work begins.
  - The contractor shall maintain at all times during the life of the contract the following insurance coverage: worker's compensation insurance as required by the State of New Hampshire; a broad form comprehensive general liability insurance policy in an amount of no less than \$1 million combined single limit per occurrence; and motor vehicle insurance to include bodily injury, property damage, uninsured motorist, and employer's non-ownership coverage in an amount no less than \$1 million combined single limit per occurrence.
  - The contractor shall also require its subcontractors to maintain such coverage.
  - Any such policies shall contain a provision that the policy shall not be terminated without the prior written consent of the Town and, in

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the case of cancellation for non-payment, without at least ten (10) days prior written notice to the Town.

- The Town of Merrimack shall be named as an additional insured on all policies required by the foregoing, and the contractor shall provide an insurance certificate confirming the above insurance coverage and such endorsement.
  - The contractor shall agree in writing to indemnify the Town of Merrimack from any and all liability, loss or damage, including but not limited to bodily injury, illness, death, or property damage, which the Town becomes legally obligated to pay as a result of claims, demands, costs, or judgments against the Town arising out of the contractor's actions or omissions relating to this contract.
- j. That bidders shall sign a non-collusion clause statement in order for the bid to be valid.

“The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this section, the word “person” means any natural person, joint venture, partnership, corporation or other business or legal entity.”

\_\_\_\_\_  
(Name of person signing bid)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Company)

2. **GENERAL BID REQUIREMENTS:** In addition to the above language that shall be contained in the bid documents, the following general requirements shall also be required.
- a. Where applicable, performance bonds shall be required and shall always be required, as specified by RSA 447:16.
  - b. All bidders, by submitting a bid, do thereby waive the right of protest should the bid or contract be awarded to a party other than the lowest bidder where the Town has determined it is in its best interest to do so.
  - c. Where applicable, the Town shall hold a bidders conference to acquaint the bidders with the process, and to address any special concerns, questions or request for exceptions that may arise.

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- d. Individuals that are hired to provide snowplowing services on a contractual basis need not have general liability and worker's compensation coverage but shall have automobile insurance coverage in the amount of \$1 million.
  - e. Minor contractors, those whose services cost less than \$5,000 and/or who pose no significant risk to the health or property of others, shall be exempt from all insurance requirements.
  - f. The worker's compensation insurance requirement may be waived if the contractor has no employees and is an individual who meets the following test of an "independent contractor":
    - i. He/she qualifies under RSA 275: 4, II or RSA 281-A: 2, VI(b): or RSA 282-A: 9, III,
    - ii. He/she meets the IRS 20 point test, IRS Publication 15-A,
    - iii. He/she has entered into a related written agreement with the Town.
3. PUBLIC NOTICE: The Purchasing Agent shall invite all bids by way of advertisement in at least one (1) newspaper of general circulation in the Town of Merrimack, and shall be listed for a minimum of at least fourteen (14) days before the time of the bid opening. All bid notices shall remain posted on the Town's website for a period of not less than fourteen (14) days.
4. The Invitation to Bid shall include the following information:
- Time and date of receipt of bids.
  - Address to which the bid is to be delivered.
  - Date by which the Town may accept the bid and contract with the vendor.
  - A general description of the good or service being purchased.
  - Any and all contractual terms and conditions applicable to the purchase.
  - Where and when an Invitation to Bid may be obtained.
  - Where and by what date bids shall be submitted.
  - Where and when bids will be opened, and by whom.
  - Reserve the Town's right to reject any and all bids.
5. AVAILABILITY OF SPECIFICATIONS: The Purchasing Agent shall mail copies of the specifications to those firms/vendors as listed in the contract files, as well as any other firms/vendors who may request a copy. The Town reserves the right to charge for copies according to size and complexity (i.e. construction drawings, etc.). In certain cases the Town may allow the Town's consultant to handle the mailing of the plans and contract documents, answer bid questions,

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issue addendums, review bids and provide recommendations for award, for construction projects.

6. **BID OPENINGS:** Where applicable, the Town shall hold a public bid opening where bidders and members of the public may attend. The bids shall be read aloud and be available for review. If a bidder would like to review the bids at a later date, they shall make arrangements with the Purchasing Agent at a time convenient to both.

### Awarding of Bid:

Unless otherwise directed by Town Council or other statutory authority, the Town Manager or his/her designee, after proper review of the bid results, shall award the bid contract in accordance with this policy and the bid specifications. This assumes that the projects, goods or services are approved budgetary item(s) and that the bid is within budgetary limitations.

### Local Vendor Preference:

Notwithstanding other grant restrictions or statutory requirements that supersede the competitive bidding requirements of this Policy, the Town Manager may award the bid contract to a vendor having his/her principal place of business in the Town of Merrimack subject to the following conditions:

1. Only a town-based business shall qualify for this preference. The term “town-based business” shall mean a business that has its principal business operations within the Town of Merrimack’s boundaries. The vendor shall provide adequate proof substantiating a bona fide principal place of business in Merrimack. Such evidence may include ownership papers, lease agreement or proof of payment of local business property taxes.
2. Any qualified local vendor shall be required to submit a signed Town of Merrimack Local Bidder Affidavit form with the sealed bid. Failure to submit an affidavit form, approved by the Town of Merrimack, shall result in the local bidder’s disqualification and ineligibility for a contract award.
3. The local bidder’s price shall not be more than 10% of the lowest qualified bid. If more than one qualified local business submits a bid, then the business with the lower bid shall receive the local preference.



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### *POLICY EXCEPTIONS*

This Policy may not apply in the following circumstances:

1. Sole Source: Departments shall justify Sole Source vendors and obtain a waiver from Town Manager that states no substitutes can adequately provide the same results.
2. Service/Contractual Agreements: Including ongoing equipment and software service agreements which have previously been approved through the budgeting process (with a list of such agreements maintained by the Finance Division and attached hereto); ongoing contracted employee agreements such as snowplowing (subject to an approved list at the beginning of each season); and Planning & Development department contracted employees.
3. Human Services: Including payments made on behalf of employees as part of their job description/training and human service contributions/ payments.
4. Professional services: Professional services shall be exempt from the purchasing guidelines and are defined as being services which meet the following requirements:
  - a. Work requiring knowledge of an advanced type or field of science or learning, including but not limited to engineers, architects, appraisers, attorneys, auditors, medical services, or;
  - b. Work that is original and creative in character in a recognized field or artistic endeavor and the result of which depends on a person's invention, imagination or talent, or;
  - c. Work as a certified teacher or trainer.

Depending on the scope of the project, the Town Manager may require that the designated project manager develop RFP specifications so that multiple proposals for a professional services contract are evaluated on a somewhat competitive, albeit subjective basis.

5. Cooperative purchasing: This Policy will not apply when goods or services are acquired through cooperative purchasing agreements. Primary examples shall include State contracts, other Governmental Agencies and the Capital Region Purchasing Council.
6. Emergencies: Inevitably there are circumstances when normal procedures shall be suspended to ensure the timely delivery of goods or services. The Town Manager or his/her designee shall be empowered to suspend the normal procedures during an emergency situation when public safety is at risk.

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7. Preemptive Legislation: This Policy will not apply to special goods, services or projects, the procurement of which is preempted by state or federal legislation. Selected examples include but are not limited to federal CFR Regulations, Davis-Bacon provisions of prevailing wage requirements.
8. Technology Enhancements: The procurement of technology equipment may be waived from the purchasing policy provisions with the approval of Finance Director. Since hardware and software standardization is critical to the efficient operation of the Town's computer system, it is not in the Town's interest to intermingle different brands or styles of computer equipment.
9. Consistently Low Bidder: With the recommendation of the Finance Director and approval from the Town Manager, the Town may waive the bidding process if there has been one bidder who has been consistently awarded contracts by being the lowest bidder. A waiver under this provision shall only be effective for two (2) fiscal years.
10. Bid Waiver: Upon written justification of the Department Head, that shall include justification and an explanation; the Town Manager may at any time waive the formal bid requirements if such waiver is in the best interest of the Town.