



COUNCIL DECISION REQUEST

SUBJECT: Modification to Procurement Policy (No. FIN 102)

MEETING DATE: ^{10 -2} ~~9-18~~-14

SUBMITTED BY: LaRon G Garrett, Asst Town Mgr

SUBMITTAL TO AGENDA
APPROVED BY TOWN MANAGER

AMOUNT BUDGETED: \$0

EXPENDITURE REQUIRED: \$0



EXHIBITS (If Applicable, To Be Attached): Redline Copy of the Proposed Revised Policy FIN 102

POSSIBLE MOTION

I move to approve the modifications of Sections 1.2.15 and 1.10.1 of the Town of Payson Procurement Policy No. FIN 102 to allow soliciting departments to reject any and all bids if they meet the criteria of Section 1.10.1.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

Procurement Policy No. FIN 102 outlines how purchasing is to be conducted by the Town. The current policy outlines possible reasons for rejecting submittals or bids. It also requires that the final decision for rejecting bids be submitted to the Town Council for approval. This recommended change adds the option for the soliciting department head to also reject the submittals or bids if they meet the rejection criteria stated in Section 1.10.1 of the policy. Depending on the situation, they may also submit the request for rejection to the Town Council for a final decision.

The attached copy of the Procurement Policy No. FIN 102 shows the proposed changes to Sections 1.2.15 and 1.10.1 in red-line form.

In summary, if approved, the revised sections will read as follows: (the bold print indicates the revised text)

Section 1.2.15 – 6th Paragraph

The Town, however, reserves the right to accept or reject any or all bids if deemed to be best for the public good and to waive any informality in the bids received. **Bids may be rejected administratively in accordance with Section 1.10.1 of this policy.**

Section 1.10.1 – 1st Paragraph

The Town reserves the right to accept or reject any or all bids and to waive any informality in the bids received. **After opening, but prior to award, the soliciting department, with the approval of the Procurement Officer or designee, may reject all submittals. The soliciting department may also recommend rejection of all submittals to the Council.** Possible reasons for rejection include, but are not limited to:

OCT 02 2014 *J-1*



COUNCIL DECISION REQUEST

Section 1.10.1 – 2nd Paragraph

If all submittals are rejected, a notice of rejection shall be provided to all entities that submitted bids or proposals in writing

PROS: This will expedite the purchasing process in the event of the necessity to reject the submittals or bids.

CONS: None.

FUNDING:

Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

FM: _____ Date: _____



PROCUREMENT POLICY

No. FIN 102

PURPOSE

This Procurement policy provides administrative guidelines to the Financial Services Department, all Town Departments, Management and Town Council.

1.0 POLICY

This policy establishes and defines the method for Town procurement procedures and sets forth guidelines for the procurement processes.

1.1 PROCUREMENT

1.1.1 INTRODUCTION

Procurement of goods and services for the Town of Payson shall conform to the appropriate method and procedures as defined in this policy.

1.1.2 PURCHASES UNDER \$10,000

The department head or designee shall have the authority to approve procurements under \$10,000. The purchase may be made using a Purchase Order, Procurement Card or verbal authorization. The purchaser should keep the best interests of the Town in mind when making these purchases. The department head is authorized to sign a contract for these purchases if the purchase was anticipated in the current budget.

Purchase requirements shall not be artificially divided so as to constitute a small purchase under this section.

1.1.3 PURCHASES \$10,000 - \$25,000

Purchases of materials and services, excluding the contract of professional services in Section 1.6, of \$10,000 or more but not exceeding \$25,000 require three (3) written quotes. Written quotes may be in the form of notes taken from an oral quote discussion. The quotes shall include the following:

- 1) Name of Business
- 2) Date of the Quote
- 3) Amount of the Quote
- 4) Name of the person giving the quote
- 5) Name of Town employee receiving the quote
- 6) A brief description of the goods or services being purchased.



Town of Payson, Arizona
Financial Policy Manual
PROCUREMENT FIN 102

Created: May 2009

Effective: January 2014

Award shall be made to the business submitting the quote that offers a product or service that is most advantageous to the Town and conforms in all material respects to the solicitation.

The Town Manager is authorized to sign a contract for these purchases as long as the item is in the current adopted budget.

Purchase requirements shall not be artificially divided so as to constitute a small purchase under this section.

1.1.4 PURCHASES GREATER THAN \$25,000

Competitive bids must be sought for all purchases of supplies, materials, equipment, insurance and contractual services, excluding professional services, having an estimated cost of \$25,000, or more, per transaction, unless an alternate method as described in Section 1.3 is used. The method for procurement of professional services, including, but not limited to, that of an attorney, an accountant, an appraiser, an architect, a landscape architect, a land surveyor, a geologist, and an engineer is described in Section 1.6

The bid shall be procured by formal, written solicitation as defined in Section 1.2.1

Bids shall include all applicable taxes in the bid amount.

Purchases greater than \$25,000, or purchases not anticipated in the current adopted budget must be approved by the Town Council. This may be done by a Council Decision Request (CDR) or Resolution.

A Request for Bids or Qualifications may be issued by the department head without further Council approval if the item is included in the current fiscal budget.

1.2 **COMPETITIVE SEALED BID PROCESS**

1.2.1 REQUEST FOR BIDS

A Request for Bids shall be issued and shall include at least the following information:

- Location where bids will be accepted,
- Date and time by which the bids must be submitted and the bid opening,
- A brief description of the goods and/or services being bid,



- A statement that the bids shall be in a sealed envelope and information on how the bid submittal should be identified on the outside of the envelope,
- The location where the complete bid package may be reviewed and obtained,
- The cost of the bid package, if any,
- Bid Bond requirements, if any,
- Minimum bidder requirements, if any,
- Town's Nondiscrimination requirements.

1.2.2 PUBLIC NOTICE

The department shall advertise the Request for Bids in the local newspaper at least twice with a minimum one week separation. The Request for Bids shall also be posted on the Town's website. If it appears that additional advertising will promote a larger response, the Request for Bids may be advertised in other publications and/or electronic media. The department may also mail the Request for Bids to individual companies.

1.2.3 PLAN HOLDER LIST

The Town Clerk shall maintain a current plan holders list for all bid projects. The list shall include the company name, mailing address, phone number, fax number, email (if available), and a contact name.

1.2.4 SEALED BID

All bids shall be delivered in a sealed envelope. No oral, telegraphic, telephonic or electronic sealed bids will be accepted.

1.2.5 PLAN AND SPECIFICATION REVIEW

The complete bid package shall be available for public inspection in the Town Clerk's Office.

1.2.6 PRE-BID MEETING

The department and procurement officer will determine if a "Pre-Bid" meeting is necessary for each bid. They may also determine that attendance at the "Pre-Bid" meeting is mandatory for all contractors submitting a bid.



1.2.7 QUESTIONS

Any questions from bidders concerning the bidding process, project specifications, etc. shall be submitted in writing to the individual specified in the bid documents. All questions submitted and answers provided shall be available to all entities on the plan holders list. If the question and answer is critical to the bid, the department head may issue an addendum to all on the plan holders list. Answers will not be provided for questions submitted within 5 calendar days of the bid date.

1.2.8 ADDENDA

It may be necessary for the department head to issue an addendum to the bid package. If so, all addenda must be issued at least 72 hours prior to the bid submittal time.

1.2.8 BID BOND

If a Bid Bond is required, it shall be equal to at least 10% of the bid amount.

1.2.9 LATE BID

A bid is late if it is received at the location designated in the Request for Bids after the time and date set for the bid opening.

A late bid shall be rejected and not considered, regardless of the reason for lateness, including circumstances beyond the control of the bidder.

A late bid shall not be opened, except (if necessary), for identification purposes.

Delivery and return of late bids shall be handled in the following manner:

- 1) If delivered in person, a late bid shall be immediately rejected and returned to the bidder.
- 2) If not delivered in person, such bid shall be filed unopened by the Town Clerk.

1.2.10 BID OPENING

Bids shall be opened publicly in the presence of one or more witnesses, including the procurement officer or designee, at the time and place designated in the Request for Bids.



Town of Payson, Arizona
Financial Policy Manual
PROCUREMENT FIN 102

Created: May 2009

Effective: January 2014

The amount of each bid, and such other relevant information as the procurement officer deems appropriate, together with the name of each bidder shall be recorded and maintained in the Financial Services Department. This record is open to public inspection.

The bids shall not be open for public inspection until after the contract is awarded.

After the contract has been awarded, the bids will be available for public inspection, except to the extent that the withholding of information is permitted or required by law.

If a bidder designates a portion of its bid as confidential, the bidder shall identify in writing the confidential portions in accordance with procedures set forth in this policy.

1.2.11 BID ACCEPTANCE

Bids shall be unconditionally accepted without alteration or correction, except as authorized by this policy.

1.2.12 BID EVALUATION

Bids shall be evaluated by the department requesting the bid based on the requirements set forth in the bid package. No criteria may be used in the bid evaluation that is not set forth in the bid package. The department head shall also verify all mathematical calculations for accuracy.

1.2.13 WITHDRAWAL OF BIDS

A bidder may withdraw his bid any time before the beginning of the bid opening with no penalty. A bidder who withdraws his bid prior to the beginning of the bid opening may modify or correct the bid and re-submit the bid as long as it is re-submitted prior to the specified date and time of the bid opening. If a bidder withdraws his bid after the bid opening, the Town may claim the Bid Bond that was submitted as a penalty.

1.2.14 BID CHANGES

After bid opening, no changes in bid prices or other provisions shall be permitted.



1.2.15 CONTRACT AWARD

The department shall review the bids regarding meeting the required specifications and mathematical calculations and determine the apparent most responsive, responsible bidder. If mathematical errors are found that materially change the bid amounts, the department head may reassess who the apparent most responsive, responsible bidder is.

After determining the apparent most responsive, responsible bidder, the department will return the bid bond for all but the two lowest bidders with a letter notifying them of who the apparent low bidder is and a copy of the bid tabulation. After all contracts or agreements are signed, the department will return the two remaining bid bonds. The department shall retain a copy of all returned bonds.

The department will prepare a Council Decision Request and present the results of the bid, including a complete bid tabulation, and the bidder determined to be the most responsive, responsible bidder whose bid conforms in all material aspects to requirements and criteria set forth in the Request for Bids.

If two bids appear to be equally responsive and responsible, the Council may award the bid by lot.

The Town Council makes the final decision on bidder selection and contract award. The decision of the Town Council on who to award the contract to shall be final, with no appeal.

The Town, however, reserves the right to accept or reject any or all bids if deemed to be best for the public good and to waive any informality in the bids received. Bids may be rejected administratively in accordance with Section 1.10.1 of this policy.

The Town, at its option, may refuse to award a contract or purchase to any vendor who is in violation of any Business License requirements or in default on the payment of Town taxes, licenses or other monies due the Town at the time of bid opening.

The Town, at its option, may refuse to award a contract or purchase to any vendor who has defaulted on a similar contract with the Town, or has defaulted on a similar contract with another jurisdiction or public entity within the last three (3) years.

After Council approval and award, the department will notify the selected bidder in writing, and shall deliver all original bid documentation, excluding the most responsive, responsible bid, to the Town Clerk for filing. The original bid documentation of the most responsive, responsible bidder shall be used to create the final contract documents for signature. The department shall coordinate the signing of any contracts or agreements. The Town may not execute the contract until any



**Town of Payson, Arizona
Financial Policy Manual
PROCUREMENT FIN 102**

Created: May 2009

Effective: January 2014

required Payment Bonds, Performance Bonds and Certificates of Insurance have been received. After signing, the original documents shall be delivered to the Town Clerk. Additional copies shall be provided for at least the following: the department issuing the call for bids, Financial Services, and the successful bidder.

1.3 ALTERNATE PURCHASE PROCEDURES

In addition to the purchase procedures defined above, the following may also be used when permitted by State law:

- 1) Purchases through a joint purchase agreement or in conjunction with another public entity or agency provided one of the parties undertakes competitive bidding for the purchase;
- 2) Purchases from another public entity or agency;
- 3) Purchases through the United States General Services Administration; or
- 4) Purchases utilizing a duly called for and received competitive bid received by another political subdivision of the state, including, but not limited to a county, a city, town or school district, for an identical item.
- 5) Any other method approved by the Council if all of the following occur:
 - a) The method complies with all applicable state and federal laws;
 - b) The Town receives greater value than could otherwise be obtained; and
 - c) At least five (5) Council Members vote for such alternative method.

1.4 PRE-QUALIFICATION OF BIDDERS

1.4.1 GENERAL INFORMATION

The Town may also pre-qualify bidders. The purpose is to identify a pool of technically qualified teams. This process uses a Request for Qualifications (RFQ) process. A RFQ is issued to any interested parties. Based on the responses submitted to the RFQ, a pool of highly qualified bidders is created. This pool will then be asked to bid.

1.4.2 REQUEST FOR QUALIFICATIONS (RFQ)

The RFQ shall include at least the following information:

- The type of project to be undertaken;
- The minimum qualifications acceptable to be considered qualified for the intended project;
- The date, time and location where the RFQ's are to be submitted;



**Town of Payson, Arizona
Financial Policy Manual
PROCUREMENT FIN 102**

Created: May 2009

Effective: January 2014

-
- The criteria to be used in the evaluation of the proposals;
 - A statement that the Town may cancel the solicitation, reject any and/or all submissions, and may waive any informalities.
 - Whether or not the Town intends to conduct oral interviews as part of process;
 - That submitters may designate portions of their proposal as proprietary data which are to remain confidential; and
 - The number of copies required of the proposal and the maximum number of pages allowed in the proposal.

The RFQ shall be published similar to a Request for Bids as specified in Section 1.2.2 of this policy.

Those firms determined to meet the minimum qualifications for the intended project will then be invited to submit sealed bids for the work in accordance with Section 1.2.1.

1.5 ALTERNATIVE DELVIERY METHODS

When the soliciting department, with approval of the procurement officer, determines that the use of the traditional Design-Bid-Build format is not the most advantageous to the Town, alternative delivery methods may be used. These “Alternative Delivery Methods” may be either “Design-Build”, “Construction Manager at Risk”, or “Job Order Contracting”. When an alternative delivery method is employed, the process must meet the requirements of Title 28 and Title 34 of the Arizona Revised Statutes.

1.6 CONTRACTING FOR PROFESSIONAL SERVICES

Professional Services shall include, but not be limited to, that of an attorney, an accountant, an appraiser, an architect, an engineer, a geologist, a land surveyor, and a landscape architect.

1.6.1 PROFESSIONAL SERVICES OTHER THAN ATTORNEY

The process for engaging professional services from an architect, assayer, engineer, geologist, land surveyor, or landscape architect, is governed by ARS Titles 15, 28, 34 and 41. Engineering projects under \$500,000 and architect, landscape architect, assayer, geologist or land surveying projects under \$250,000 may be awarded by any of the following processes. For projects exceeding these dollar amounts Section 1.6.1(c) must be used.

Any of the following processes may also be used to engage an accountant, appraiser, or any other professional service not specifically listed above:



**Town of Payson, Arizona
Financial Policy Manual
PROCUREMENT FIN 102**

Created: May 2009

Effective: January 2014

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- a) Direct Select – The department may directly select the registered professional. After the selection is determined, a scope of services with an associated fee is negotiated.
- b) Selection Committee – The department may initiate a selection committee to develop a preferential short list based only on demonstrated competence and qualifications. The committee may solicit qualifications from potential firms in order to establish the short list. The short list must contain at least three firms, listed in order of preference. The selection committee shall not request or consider fees, price, man-hours or any other cost information in the selection of the short list or order of preference. The Town shall enter into negotiations with the highest ranked firm taking into consideration contract terms, scope, complexity, compensation, etc. If the parties are not able to negotiate a satisfactory contract, the Town shall terminate negotiations and enter into negotiations with the next firm on the short list. This process is continued until an acceptable agreement is reached.
- c) Request for Qualifications – The department issues a Request for Qualifications (RFQ) and advertises in the newspaper for the project. A selection committee will evaluate the statements of qualifications and performance data submitted in response to the RFQ. The selection committee may also conduct discussions with no more that 3 firms deemed to be the most qualified based on competence and qualifications only. The selection committee shall not request or consider fees, price, man-hours or any other cost information in the selection of the short list or order of preference. The committee shall prepare a short list in order of preference. The Town shall enter into negotiations with the highest ranked firm taking into consideration contract terms, scope, complexity, compensation, etc. If the parties are not able to negotiate a satisfactory contract, the Town shall terminate negotiations and enter into negotiations with the next firm on the short list. This process is continued until an acceptable agreement is reached.

1.6.2 PUBLICATION OF REQUEST FOR QUALIFICATIONS

The Request for Qualifications shall be published similar to a Request for Bids as defined in Section 1.2.2 of this document.



1.6.3 SELECTION PROCEDURE FOR LEGAL COUNSEL

Any outside legal counsel must be approved by the Town Attorney. If the outside counsel is approved, the Town Attorney's office will review the circumstances and determine who would be an appropriate selection. That selection will be based on the outside counsel's field of expertise. This section shall not apply to court appointed defense counsel.

1.7 SOLE SOURCE PROCUREMENT

A purchase may be made or contract awarded by the soliciting department without competition when the soliciting department head determines in writing, after

conducting a good faith review of available sources, that there is only one reasonable and practicable source for the required material, equipment, or service.

The soliciting department requesting the sole source procurement shall provide written evidence to support a sole source determination.

The procurement officer may require the submission of cost, pricing data or documentation that only one (1) provider can provide the item or service, or other written evidence in connection with a purchase or award under this section.

Sole source procurement shall be avoided, except when no reasonable alternative sources exist.

A record of sole source procurements shall be maintained as a public record.

1.7.1 SOLE SOURCE APPROVED ITEMS

The following items may be approved for sole source procurements:

- 1) Equipment:
 - Interface upgrades
 - Add-on parts and components to existing Town owned equipment which requires total compatibility assurance
 - License renewals for Town owned software
 - Repair and maintenance for Town owned equipment and software for which it is technologically and cost effective to procure from the original seller or manufacturer
 - Specialized equipment that has a limited availability
- 2) Materials for resale on Town concession operations that are purchased in response to customer demands.



Town of Payson, Arizona
Financial Policy Manual
PROCUREMENT FIN 102

Created: May 2009

Effective: January 2014

-
- 3) Spot market purchases which are evidenced to provide a substantial savings to the Town and which are approved by the procurement officer or a party delegated by the procurement officer to review the justification for spot market purchase requests.
 - 4) Any purchase of a dollar amount requiring council approval shall be submitted and approved prior to purchase, at the next scheduled council meeting.
 - 5) Specialized computer software for network infrastructure applications which have been technically reviewed, tested and justified by the Town's Information Technology division, and which are obtainable from a single source.
 - This shall not apply to individual PC software obtainable from multiple suppliers

1.8 EMERGENCY PROCUREMENTS

Notwithstanding any other provisions of this chapter, a soliciting department head or designee may make or authorize others to make emergency procurements of materials, services or construction items when there exists a threat or severe impairment to the quality of public health, welfare or safety, or if a situation exists which makes compliance with established procurement processes impracticable, unnecessary or contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances.

An emergency procurement shall be limited to those materials, services or construction necessary to satisfy the emergency need.

A written determination of the basis for the emergency and for the selection of the particular contractor shall be submitted to Financial Services and included in the payment file.

Any emergency procurement exceeding the dollar limit for council approval shall be scheduled and approved, prior to purchase, if possible. Otherwise, it shall be presented at the next available council meeting.

1.9 CANCELLATION OF SOLICITATIONS

1.9.1 CANCELATION OF SOLICITATION

A Request for Bids, a Request for Proposals or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part prior to opening



**Town of Payson, Arizona
Financial Policy Manual
PROCUREMENT FIN 102**

Created: May 2009

Effective: January 2014

as specified in the solicitation and/or bidding package. As used in this section, “opening” means the date and time set for opening of bids, or the date and time set for receipt of the statements of qualifications. The solicitation cancellation may be done by the soliciting department head with concurrence of the procurement officer.

When a solicitation is cancelled prior to opening, notice of cancellation shall be sent to all businesses solicited and/or all entities listed on the plan holders list:

- Identifying the solicitation
- Briefly explaining the reason, if any, for the cancellation, and
- Announcing the opportunity to compete on any re-solicitation or future procurements of similar materials and services, if appropriate.

1.9.2 REASONS FOR CANCELLATION OF SOLICITATION

Prior to opening, a solicitation may be cancelled in whole or in part when the soliciting department, with the approval of the Procurement Officer or designee, such action may be taken for any reasons including, but not limited to:

- The Town no longer requires the materials or services;
- The Town no longer can reasonably expect to fund the procurement; or
- Proposed amendments or addendums to the solicitation would be of such magnitude that a new solicitation is desirable.

1.10 REJECTION OF BIDS OR PROPOSALS AFTER OPENING

1.10.1 REJECTION OF ALL SUBMITTALS

The Town reserves the right to accept or reject any or all bids and to waive any informality in the bids received. After opening, but prior to award, -the soliciting department, with the approval of the Procurement Officer or designee, may ~~recommend rejection of all submittals to the Council.~~ The soliciting department may also recommend rejection of all submittals to the Council. Possible reasons for rejection -include, but are not limited to:

- 1) The materials or services being procured are no longer required;
- 2) Ambiguous or otherwise inadequate specifications were part of the solicitation;
- 3) The solicitation did not provide for consideration of all factors of significance to the Town;
- 4) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;



**Town of Payson, Arizona
Financial Policy Manual
PROCUREMENT FIN 102**

Created: May 2009

Effective: January 2014

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- 5) All otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
 - 6) There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.
 - 7) The bid is non responsive.

If ~~the Council votes to reject all submittals~~ all submittals are rejected, a notice of rejection shall be provided to all entities that submitted bids or proposals in writing

The reasons for cancellation or rejection shall be made a part of the procurement file.

1.10.2 REJECTION OF AN INDIVIDUAL SUBMITTAL

An individual proposal or bid may be rejected if:

- 1) The submitter is determined to be non-responsive; or
- 2) The submittal is determined to be non-responsive; or
- 3) The submitter is determined to be under qualified; or
- 4) There are major errors in the submittal; or
- 5) The submitter is in violation of any Business License requirements; or
- 6) The submitter is in default on the payment of Town taxes, licenses or other monies due the Town at the time of the submittal opening; or
- 7) The submitter has defaulted on a similar contract with the Town or a similar contract with another jurisdiction or public entity within the past three (3) years.
- 8) It is otherwise not advantageous to the Town

1.11 **RESPONSIBILITY OF BIDDERS AND OFFERORS**

1.11.1 DETERMINATION OF NON-RESPONSIBILITY

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsive, the soliciting department shall prepare a written determination of non-responsibility, setting forth the basis of the finding.

The failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

The final determination shall be made part of the contract file.



1.11.2 RIGHT OF NON-DISCLOSURE

The bidder or offeror may request that information furnished pursuant to this section shall not be disclosed by the Town outside of the department, or using agency, without prior written consent by the bidder or offeror, unless such information is, or is part of, a public record pursuant to A.R.S. 39-101 et seq.

1.11.3 FACTORS USED TO DEMONSTRATE BIDDER OR OFFEROR RESPONSIBILITIES

For a bidder or offeror to be considered responsible, the bidder or offeror shall demonstrate to the satisfaction of the Town, its capability to perform an awarded contract in a satisfactory and timely manner, based on requirements stated in the Town's solicitation which may include but not be limited to whether the proposed bidder or offeror:

- 1) Has financial, physical, personnel or other resources, including subcontractors;
- 2) Has a successful record of performance and integrity, which may include past contracts with the Town or other public agencies;
- 3) Is legally licensed, certified or otherwise legally qualified to contract with the Town;
- 4) Has supplied all necessary information concerning its responsibility to meet Town requirements for contract responsibilities;
- 5) Has a current Town of Payson Business License.

1.11.4 PROCUREMENT RESPONSIBILITY CRITERIA

The soliciting department may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

1.11.5 PRE-QUALIFICATION

Prospective contractors may be pre-qualified for particular types of materials, services and construction. The Pre-Qualification process is described in Section 1.4 of this policy.

Prospective contractors have a continuing duty to provide the soliciting department with information on any material change affecting the basis of pre-qualification.



1.11.6 BID AND CONTRACT SECURITY, MATERIAL OR SERVICE CONTRACTS

The soliciting department may require the submission of security to guarantee faithful bid and contract performance.

Security shall be in the form specified within the Town's bid solicitation, and may include but not be limited to a bid bond, performance bond, and payment bond. A performance bond and payment bond shall be required for all construction projects of \$25,000 or more.

Bid Bonds shall be for at least 10% of the bid. Performance and payment bonds shall be for at least 100% of the bid cost.

The requirement for security must be included in the Request for Bids, Request for Proposals, or Bid Package.

Failure to submit security in the amount and type of security required may result in the rejection of the bid or proposal.

1.12 **CONTRACTS**

1.12.1 GENERAL

All contracts exceeding a value of \$25,000 shall be on the Town's standard contract form unless otherwise approved by the Town's Legal Department.

1.12.2 CONTRACT ADMINISTRATION

A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained.

1.12.3 MULTI-TERM CONTRACTS

Unless otherwise provided by law, a contract for materials or services may be entered into for a period of time as deemed to be in the best interest of the Town, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting.

Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.



1.12.4 CONTRACT FORM AND EXECUTION

All contracts entered into shall meet the requirements of Town of Payson Administrative Policy A-201.

1.12.5 CONTRACT CLAUSES

All Town contracts for materials, services and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract.

The soliciting department, after consultation with the Town Attorney, may issue clauses appropriate for material, 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 of work in contract and actual quantities;
- 4) Defective pricing;
- 5) Liquidated damages;
- 6) Specified acceptable reasons for delay or nonperformance;
- 7) Termination of the contract for default;
- 8) Termination of the contract in whole or in part for the convenience of the Town;
- 9) Suspension of work on a construction project ordered by the Town; and
- 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 that is negotiated, when the contractor provides the site or design, or when the parties have otherwise agreed with respect to the risk of differing site conditions.
- 11) Dispute resolution.

1.12.6 CHANGE ORDERS

Change Orders for an increase or decrease in bid quantities or additions to a contract are allowable if sufficient budgeted funds are available. The cost of such change orders shall be computed in one or more of the following ways:



**Town of Payson, Arizona
Financial Policy Manual
PROCUREMENT FIN 102**

Created: May 2009

Effective: January 2014

- 1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon as thereafter as practicable;
- 2) By unit prices specified in the contract or subsequently agreed upon;
- 3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- 4) In such other manner as the contracting parties may mutually agree;
- 5) In accordance with a cost escalation clause that is included in the project bid documents and/or general conditions.
- 6) In the absence of agreement by the parties, by a unilateral determination by the Town of the costs attributable to the events or situations with adjustment of profit or fee as computed by the Town; or
- 7) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is requested and permitted by the bid solicitation or contract.
- 8) The department head has the authority to approve change orders as long as they are within the parameters of the approved budget authority.
- 9) For contracts based on estimated quantities and unit costs, the actual final project cost will be based on field verified quantities.

1.13 TOWN RESPONSIBILITY

1.13.1 RIGHT TO INSPECT PLANT

The Town may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded or to be awarded by the Town.

1.13.2 RIGHT TO AUDIT RECORDS

The Town may, at reasonable times and places, audit the books and records of:

- 1) Any person, vendor or contractor who submits cost or pricing data to the extent that the books and records relate to the cost or pricing data;
- 2) Any contractor or subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract.



1.13.3 REPORTING OF ANTI-COMPETITIVE PRACTICES

If for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Town Manager and the Town Attorney.

This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the Town Manager.

1.14 **VENDOR RESPONSIBILITY**

The books and records of the chosen vendor shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contractor and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the procurement officer or designee.

1.15 **PROSPECTIVE BIDDER'S LIST**

Due to volatility in the contractor and vendor field, the Town does not maintain a bidders list. When bidding a project, the Town will follow Section 1.2 of this document to notify prospective bidders.

1.16 **SPECIFICATIONS**

1.16.1 DEFINITION

As used in this policy, "specification" means any description of the physical or functional characteristics, or of the nature of a material, service or construction item.

Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery.

1.16.2 MAXIMUM PRACTICABLE COMPETITION

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Town's needs and shall not be unduly restrictive.

No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.



**Town of Payson, Arizona
Financial Policy Manual
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To the extent practicable and unless otherwise permitted by this policy, all specifications shall describe the Town's requirements in a manner that does not unnecessarily exclude a material, service or construction item.

1.16.3 PROPRIETARY SPECIFICATIONS

Proprietary specifications shall not be used unless the soliciting department with the approval of the procurement officer or designee determines in writing that

such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification.

Past success in a material's performance, traditional purchasing practices or inconvenience of drawing specifications do not justify the use of proprietary specifications.

If a proprietary specification is determined to be appropriate, the specification shall include the following:

- 1) A description of the essential characteristics of the products and materials so specified; and
- 2) A statement indicating the Town's intent to consider alternative products or materials that have the described essential characteristics if such alternative products or materials are identified.

1.16.4 SUBMITTING A BID FOR ALTERNATIVE PRODUCTS OR MATERIALS

Persons desiring to submit bids for alternative products or materials for prior approval shall submit such products and any support information no less than 15 calendar days prior to the scheduled bid opening date.

The Town shall consider and either approve or reject the alternative materials submitted and shall comply with the following requirements:

- 1) If the Town has approved an alternative product or material, the bid solicitation shall be modified by issuing an addendum to all know plan holders at least ten (10) calendar days prior to the bid opening deadline; and
- 2) If the Town rejects an alternative product or material, it shall give notice of the rejection to the bidder proposing the alternative



product or material at least 10 calendar days prior to the bid opening date.

The rejection notice shall include a description of the rejected product or material.

←----- **Forma**

1.16.5 ACCEPTED COMMERCIAL SPECIFICATIONS

To the extent practicable, the Town shall use accepted commercial specifications and shall procure standard commercial materials.

1.16.6 BRAND NAME OR EQUAL SPECIFICATION

A brand name or equal specification may be used when the soliciting department head and the procurement officer or designee determines that use of brand name or equal specifications is advantageous to the Town.

A brand name specification may be prepared and utilized only if the soliciting department head and the procurement officer or designee makes a determination that only the identified brand name item will satisfy the Town's needs.

1.16.7 OZONE-PRODUCING AGENTS

To the extent practicable and where applicable, specifications shall promote products which are documented and evaluated to have low or no content of reactive organic compounds (ozone producing agents).

1.16.8 CONSERVATION

Where the Town considers practicable, cost effective and applicable, specifications shall promote the use of recycled content, recyclability, energy consumption and conservation.