

MEMORANDUM

Town of Mansfield
Town Manager's Office
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To: Toni Moran, Chair, Ad hoc Committee for Responsible Contracting
From: Matt Hart, Town Manager *MWH*
CC: Ad hoc Committee for Responsible Contracting; Maria Capriola, Assistant Town Manager;
John Carrington, Director of Public Works; Cherie Trahan, Director of Finance
Date: July 10, 2014
Re: Policy Statement and Purchasing Ordinance

In your role as chair of the Town Council's Ad hoc Committee for Responsible Contracting, you have asked me to provide some preliminary thoughts on how the town's purchasing ordinance (Chapter 76 of the Mansfield Code) could be amended to add a policy statement regarding a contractor's fair and equitable treatment of its employees and to include a review of the contractor's employment and safety record as a factor in the procurement process. My understanding is that you are *not* looking to insert the provisions of a responsible contracting ordinance within the purchasing ordinance, as the members of the committee have explained that they are not interested in pursuing such legislation. Instead, you are looking for suggestions as to how the town could best state its intent to use contractors who treat their employees in a fair and equitable manner, taking care to observe all relevant employment laws (e.g. wage and hour regulations; worker classification rules) and who promote and maintain safety at the workplace. In addition, you are seeking recommendations as to how to best add a review of the contractor's employment and safety record as a factor in the contractor selection process.

I have thought of two ways to accomplish this objective – one would be to amend the purchasing ordinance and the second would be to promulgate a stand-alone policy resolution that could be added to the Town Council's policy index.

As a threshold matter, the committee would first need to determine what contracts to include under the scope of these provisions, and whether to extend these requirements to the contractor's subcontractors. Thus far, the committee's review has been limited to construction contracts, but there are many other contracts that fall under the purview of the purchasing ordinance, including contracts for the purchase of goods and contracts for professional services (e.g. consultants). Depending on the contractor's area of business, its record with agencies such as the DOL and OSHA may be more or less extensive. However, every business needs to observe employment and safety laws.

A related issue would be the administrative burden associated with conducting a review of the contractor's employment and safety record. The town purchases most of its goods by utilizing the state bid list or similar services, such as that administered by the Capitol Region Council of Governments (CRCOG). One of the benefits of those services is that the state or other sponsoring agency has already pre-qualified the vendor for public procurement purposes and adding a subsequent review on the part of the town would make the selection process less stream-lined. As town manager, I would be concerned about complicating this process and losing one of the primary benefits of the state or CRCOG bid system.

Contracts for construction projects and for professional services are somewhat different. In these areas, the town normally relies on its own purchasing procedures as well as those required by any state or federal grantor agency. For these areas, the town could conceivably ask the contractor to disclose or self-report any previous violations which could be verified through a straightforward review of the contractor's public record.

Looking at the purchasing ordinance specifically, Section 76-3 (Purpose) could be amended to add a policy statement to highlight the town's intent to utilize contractors who treat their employees in a fair and equitable manner, observing all employment laws and maintaining a safe work environment, as well as other policy goals the Town Council deems appropriate. Section 76-4(D) (Award of contract) states that the Town will award a contract to the vendor or contractor "who offers the *best value* to the town." The best value concept is distinct from the *low bid* principle, and does not require the town to award a contract to the lowest bidder. Section 76-4(D) lists all of the various factors that the town may consider in making a best value determination. This section could be revised to include the contractor's employment and safety record as a factor for consideration in the best value analysis. To analyze this factor, the town could require the contractor to disclose any related Department of Labor (DOL) and Occupational Safety and Health Administration (OSHA) violations, which could be verified via a background check of the contractor's public record. Subsections 76-4(D)(9) and (10) arguably get at this issue to a limited extent by listing the contractor's "ability, capacity, experience, skill and judgment" and its "reputation, character and integrity" as factors that the town can consider in the selection process. Additional language regarding the contractor's employment and safety record would make the Town Council's intent more clear.

As an alternative to amending the purchasing ordinance, the committee could recommend that the Town Council issue a separate policy resolution highlighting the town's goal of hiring contractors who treat their employees in a fair and equitable manner, and who promote and maintain workplace safety. The policy statement could further direct staff to conduct a review of a contractor's employment and safety record, and the Town Council could add such a resolution to its policy index. However, it is important to note that a policy resolution does not carry the full force of law and the council has limited ability to bind its successors.

In summary, I hope that this information is useful to the deliberations of the ad hoc committee. I am happy to answer any questions you may have.

Attach: (1)

Town of Mansfield, CT
Thursday, July 10, 2014

Chapter 76. PURCHASING

[HISTORY: Adopted by the Town Council of the Town of Mansfield 6-22-2009, effective 7-22-2009. Editor's Note: This ordinance also superseded former Ch. 76, Purchasing, adopted 5-29-1990. Amendments noted where applicable.]

GENERAL REFERENCES

Administrative departments — See Ch. 2.
Code of Ethics — See Ch. 25.
Disposal of property — See Ch. 73.
Reserve Fund — See Ch. 85.

§ 76-1. Title.

This chapter shall be known and may be cited as "The Ordinance for Obtaining Goods and Services."

§ 76-2. Legislative authority.

This chapter is enacted pursuant to the provisions of Town Charter § C506B(1)(c).

§ 76-3. Purpose; applicability; environmental considerations.

- A. The purpose of this chapter is to provide a set of procedures designed to obtain the best possible value for the necessary goods and services purchased by the Town of Mansfield, in accordance with Article V, § C506, of the Town Charter. The Town Council has determined that competitive bidding in some instances may be against the best interest of the Town. The Council, therefore, invokes its powers under Article V, § C506B(1)(c), of the Town Charter to establish this chapter designed to better ensure receipt by the Town of the best possible value for necessary goods and services by taking advantage of all prudent purchasing methods and opportunities available in the marketplace, including the open competitive bidding process, and delegates authority to implement these procedures to the Purchasing Agent. These procedures are further designed to provide for the fair and equitable treatment of all persons involved in public purchasing by the Town of Mansfield.
- B. This chapter shall apply to the purchase of all supplies, materials, equipment and other commodities and contractual services and construction (hereafter referred to as "products and services") required by any department, agency, board or commission of the Town, irrespective of the source of funds, except the purchase of specialized goods and contractual services for the purpose of instruction by the Board of Education. The Mansfield Board of Education and the Region 19 Board of Education shall be encouraged to adopt purchasing regulations similar to the provisions of this chapter. Nothing herein

contained shall be construed to prevent the Director of Finance from serving, to the extent requested, as the Purchasing Agent for all requirements of the Board(s) of Education.

- C. In order to increase the development and awareness of environmentally sound products and services, the Town of Mansfield will ensure that all possible and feasible specifications are reviewed for consideration of environmental impacts. Consideration will be given to those products that, from a life cycle perspective, adversely affect the environment in the least possible way. This means that the Town of Mansfield will make a reasonable and responsible effort to choose product and services that:
- (1) Are produced in an environmentally responsible manner.
 - (2) Are distributed in an environmentally responsible manner.
 - (3) Cause the least possible damage to the environment.
 - (4) Can be removed in an environmentally responsible manner.

§ 76-4. Solicitation and award procedures.

- A. As provided in the Town Charter, the Director of Finance shall serve as the Purchasing Agent for the Town, and shall be responsible for the procurement of all products and services for the Town. Subject to the limitations set forth in the Charter and in § 76-3B of this chapter, the Purchasing Agent shall have the authority to approve all contract specifications, prescribe the method of source selection to be utilized in the procurement of all products or services, award all contracts for products and services based on a determination of the bidder who offers the best value to the Town, and shall have the authority necessary to enforce the purchasing provisions of the Charter and these rules. In addition, the Purchasing Agent shall have the following specific duties:
- (1) To inspect all supplies, material and equipment ordered by and delivered to the Town to ensure compliance with specifications and conditions affecting the purchase thereof, or delegate the inspection thereof to such Town employees as are authorized to purchase said supplies, materials or equipment in accordance with Subsection B of this section.
 - (2) To procure and award contracts for, or supervise the procurement of, all products and services needed by the Town, and to maintain custody and care of all contracts for goods and contractual services to which the Town is a party.
 - (3) To transfer between offices or sell, trade, or otherwise dispose of surplus supplies, materials, or equipment belonging to the Town.
 - (4) To prepare, issue, revise, and maintain all bid specifications and to establish and maintain programs for specification development, and the inspection, testing, and acceptance of products and services.
 - (5) To prepare and adopt operational procedures governing the procurement functions of the Town.
 - (6) To have the discretion and authority for cause to disqualify vendors and to declare them to be irresponsible bidders and to remove them from receiving any business from the Town.
 - (7) To cancel, in whole or in part, an invitation to bid, a request for proposals, or any other solicitation, or to reject, in whole or in part, any and all bids or proposals when to do so is in the best interests of the Town.

- (8) To require, when necessary, bid deposits, performance bonds, insurance certificates, and labor and material bonds or other similar instruments or security which protect the interests of the Town.
 - (9) To procure for the Town all federal and state tax exemptions to which it is entitled.
 - (10) To ensure that the Town is exempt from state fair trade laws as provided by the Connecticut General Statutes.
 - (11) To join with other units of government and with private sector organizations in cooperative purchasing plans when the best interests of the Town would be served.
- B. Delegation to other Town officials. With the written approval of the Town Manager, the Purchasing Agent may delegate any portion of the authority to purchase certain products and services to other Town employees, if such delegation is deemed necessary and appropriate for the effective and efficient operation of Town government and for the procurement of those items. The Purchasing Agent, with the written approval of the Town Manager, may revoke such delegation at any time. The person to whom such authority is delegated shall be responsible for complying with the requirements of the Charter, this chapter and any rules or regulations which may exist relating to the execution of the procurement process.
- C. Methods of source selection. In accordance with Article V of the Town Charter, unless otherwise prescribed by law, the Purchasing Agent shall take advantage of all prudent purchasing methods and opportunities available in the marketplace. This includes, but is not limited to, such methods as competitive sealed bids, competitive sealed proposals, competitive negotiation, sole-source procurement, small purchase procedures, credit card procedures, bulk ordering, emergency purchases, multi-step bidding, Internet purchasing, use of cooperative purchasing plans and public auctions. In deciding which method to utilize, the Purchasing Agent may take into consideration the following factors:
- (1) How to obtain the best value for the commodity.
 - (2) Whether or not to utilize a fixed-price or fixed-service contract under the circumstances.
 - (3) Whether quality, availability, or capability is overriding in relation to price.
 - (4) Whether the initial installation needs to be evaluated together with subsequent maintenance and service capabilities and what priority should be given to these requirements.
 - (5) What benefits are derived from product or service compatibility and standardization and what priority should be given these requirements.
 - (6) Whether the marketplace will respond better to a solicitation permitting not only a range of alternative proposals, but evaluation, discussion, and negotiation of them before making the award.
 - (7) What is practicable and advantageous to the Town.
 - (8) The availability of vendors.
 - (9) The efficiency of the process.
 - (10) The fair and equitable treatment of potential participants.
 - (11) The degree to which specifications can be made clear and complete.
 - (12) The timeliness of the process to the needs of the Town.
- D. Award of contract. Contracts shall be awarded, by the Purchasing Agent to the vendor who offers the best value to the Town. The Finance Committee shall be advised in the next quarterly financial report, or sooner when appropriate, when the Purchasing Agent awards

a contract for goods or services (but not professional services as defined in Subsection I) other than by competitive sealed bid in accordance with Article V, § C506B(1)(c), of the Town Charter. Best value shall be determined by consideration of some or all of the following factors as deemed appropriate by the Purchasing Agent:

- (1) The quality, availability, adaptability, and efficiency of use of the products and service to the particular use required.
- (2) The degree to which the provided products and services meet the specified needs of the Town, including consideration, when appropriate, of the compatibility with and ease of integration with existing products, services or systems.
- (3) The number, scope, and significance of conditions or exceptions attached or contained in the bid and the terms of warranties, guarantees, return policies, and insurance provisions.
- (4) Whether the vendor can supply the product or service promptly, or within the specified time, without delay or additional conditions.
- (5) The competitiveness and reasonableness of the total cost or price, including consideration of the total life-cycle cost and any operational costs that are incurred if accepted.
- (6) A cost analysis or a price analysis including the specific elements of costs, the appropriate verification of cost or pricing data, the necessity of certain costs, the reasonableness of amounts estimated for the necessary costs, the reasonableness of allowances for contingencies, the basis used for allocation of indirect costs, and the appropriateness of allocations of particular indirect costs to the proposed contract.
- (7) A price analysis involving an evaluation of prices for the same or similar products or services. Price analysis criteria include, but are not limited to: price submissions of prospective vendors in the current procurement, prior price quotations and contract prices charged by the vendor, prices published in catalogs or price lists, prices available on the open market, and in-house estimates of cost.
- (8) Whether or not the vendor can supply the product or perform the service at the price offered.
- (9) The ability, capacity, experience, skill, and judgment of the vendor to perform the contract.
- (10) The reputation, character and integrity of the vendor.
- (11) The quality of performance on previous contracts or services to the Town or others.
- (12) The previous and existing compliance by the vendor with laws and ordinances or previous performance relating to the contract or service, or on other contracts with the Town or other entities.
- (13) The sufficiency, stability, and future solvency of the financial resources of the vendor.
- (14) The ability of the vendor to provide future maintenance and service for the use of the products or services subject to the contract.

E. Common specifications and standards.

- (1) In accordance with this chapter, all of the Town's departments, agencies, boards and commissions shall work together with the Purchasing Agent to identify common needs and establish standard specifications for the purchase of goods and contractual services which are commonly used by more than one department, agency, board, or commission.

- (2) The Purchasing Agent shall be responsible for identifying goods and contractual services common to the needs of the Town, School Department and their boards and commissions and for preparing and utilizing standard written specifications submitted for such goods and contractual services. After adoption, each standard specification shall, until revised or rescinded, apply in terms and effect to every purchase and contract for said goods or contractual service. The Town Manager may exempt any using agency of the Town from the use of the goods or contractual services in such standard specification if, in his/her judgment, it is in the best interest of the Town to so do.

F. Sole-source procurement and brand name specification.

- (1) It is the policy of the Town to encourage fair and practicable competition consistent with obtaining the best possible value for the necessary products and services required by the Town. Since the use of sole-source procurement or a brand name specification is restrictive, it may be used only when the Purchasing Agent makes a written determination that there is only one practical source for the required product or service or that only the identified brand name item or items will satisfy the Town's needs and the Town Manager concurs with such finding. A requirement for a particular brand name does not justify sole-source procurement if there is more than one potential vendor for that product or service.
- (2) Any request by a using agency that procurement be restricted to one potential contractor or be limited to a specific brand name shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.
- (3) A record of all sole-source procurements and brand name specifications shall be maintained. Sole-source records shall list each contractor's name; the amount and type of each contract; a listing of the products or services procured under each contract; and the effective dates of the contract. Brand name records shall list the brand name specification used, the number of suppliers solicited, the identity of these suppliers, the supplier awarded the contract, and the contract price. The Town Council Finance Committee shall be advised, in the next quarterly financial report, or sooner when appropriate, when the Purchasing Agent and the Town Manager have made a determination of brand name or sole-source selection.

G. All purchases made and contracts executed by the Purchasing Agent shall be pursuant to a written or electronic purchase order from the head of the office, department or agency whose appropriation will be charged, and no contract or order shall be issued to any vendor unless and until the Director of Finance certifies that there is to the credit of such office, department or agency a sufficient unencumbered appropriation balance to pay for the supplies, materials, equipment or contractual services for which the contract or order is to be issued. This requirement may be deferred in the event that an emergency situation requires prompt action by the Purchasing Agent. This subsection will not prevent the use of open purchase orders or the use of a purchasing card program designed to consolidate many small transactions onto a single monthly invoice.

H. The responsible head of each department, office, institution, board, commission, agency or instrumentality of the Town shall certify, in writing, to the Purchasing Agent the names of such officers or employees who shall be exclusively authorized to sign purchase orders for such respective department, office, institution, board, commission, agency or

instrumentality, and all requests for purchases shall be void unless executed by such certified officers or employees and approved by the Purchasing Agent.

- I. Professional services. As the procurement of professional services is generally exempt from the requirements of competitive sealed bidding, all contracts for professional services, including legal services, shall be obtained in accordance with the following guidelines, with the exception of the Town Attorney who shall be chosen in accordance with Article III, § C305, of the Town Charter. The Town Manager shall execute an agreement for professional services with the appointed Town Attorney.
 - (1) A request for proposal (RFP) or request for qualifications (RFQ) shall be written for all requests for professional services [except as described in Subsection I(3) below] in excess of \$10,000. The RFP or RFQ shall be written in such a manner as to describe the requirement to be met, without having the effect of exclusively requiring a proprietary product or service, or procurement from a sole source, unless approved in accordance with the requirements of this section.
 - (2) When the scope of work is less precise, the preferred method of obtaining professional services shall be through the use of competitive negotiation. The process used for the solicitation of proposals shall assure that a reasonable and representative number of vendors are given an opportunity to compete. The Town Manager may limit the number of qualified vendors considered and may approve solicitation by invitation or public notice.
 - (3) In accordance with Article III, § C305C, of the Town Charter, the Town Manager, with the approval of the Town Council, may obtain special legal services other than the Town Attorney. In obtaining those services, the Town Manager may consider, in addition to hourly rate, the reputation, character and integrity of the firm, the quality of performance on previous contracts and services to the Town, the ability of the firm to provide these services over an extended period, and the ability, capacity, experience, skill and judgment of the attorneys performing the service.
 - (4) The award of a professional services contract shall be done in a manner designed to obtain the best possible value to the Town and with consideration of the factors listed in Subsection D of this section, titled "Award of contract."
 - (5) Professional services defined.
 - (a) Professional services are defined as:
 - [1] Work requiring knowledge of an advanced type in a field of study and which frequently requires special credentialing, certification or licensure. Such areas include but are not limited to engineers, architects, appraisers, medical service providers, consultants, actuaries, banking services, and legal; or
 - [2] Work that is original and creative in character in a recognized field or artistic endeavor or requires special abilities and depends primarily on a person's invention, imagination, or creative talent. Such fields or artistic endeavors include but are not limited to the following: health and fitness, cultural arts, crafts, ice skating, and specialty area instructors; and
 - [3] Work that requires consistent exercise of independent discretion and judgment to perform according to a provider's own methods and without being subject to the control of the Town except as to the result of the work.

- (b) Professional service providers shall not be dependent on the Town as their sole client, and must be clearly considered an independent contractor as opposed to an employee as defined by state and federal laws, regulations, and court decisions.
- (6) On behalf of the Town, the Town Manager shall have the authority and responsibility to execute professional service contracts in excess of \$10,000.
- J. Invoice schedule. All contracts for goods, contractual services and professional services to which the Town is a party shall include a provision requiring the vendor or contractor to invoice the Town in a timely manner, pursuant to a schedule established by the Purchasing Agent.
- K. Custody of contracts. All contracts for goods, contractual services and professional services to which the Town is a party shall be kept in the office of the Purchasing Agent and shall be under the care and custody of the Purchasing Agent unless the Purchasing Agent has delegated the authority to take custody of such a contract to another Town official in accordance with Subsection **B** of this section. All other contracts to which the Town is a party or to which any officer or board, bureau or commission of the Town, acting in behalf of the Town, is a party shall be kept on file in the Town Clerk's office and shall be under the care and custody of the Town Clerk. When any officer, board, bureau or commission of said Town shall require any original contract in which the Town is interested, as aforesaid, the contract shall not be taken from the Town Clerk's or Purchasing Agent's office until such officer, board, bureau or commission has given a receipt therefor, and a copy of such contract shall be filed with the Town Clerk or Purchasing Agent as soon as the same can be made. The above provisions shall not apply when any such contract is needed for temporary use in the Town building and is returned on the same day that it is taken.