

Resolution No. 05-02
Introduced: 5/18/05
Adopted: 6/8/05
Effective Date: 7/8/05

**RESOLUTION
OF
TOWN OF CHEVY CHASE**

SUBJECT: Amendment to Chapter 2, Article III, Division 2, entitled "Methods of Procurement"

WHEREAS, Article V, Section 519(b) of the Town Charter requires the Town Council to prescribe by law for competitive bidding for purchases or contracts with the Town except for professional services customarily negotiated; and

WHEREAS, pursuant to such Charter provision, the Town Council adopted Section 2-140 through Section 2-148 of the Town Code; and

WHEREAS, the Town Council has determined that there is a need to increase the threshold dollar amount requiring competitive bidding and/or the solicitation of proposals from professional contractors, to modify the factors, first to evaluate contractors and then to eliminate the Town Code's exemption of "architects- engineering" services from other professional services.

NOW THEREFORE, BE IT ENACTED that Section 2-140 through Section 2-150 are amended to read as follows:

Section 1.

METHODS OF PROCUREMENT

Sec. 2-140. Competitive bidding-Generally.

All contracts for goods and services, except professional services, and all sales of town property which has become surplus, obsolescent or unusable shall be based on competitive bids, except as to real or leasehold property, or as otherwise provided in this article. (Ord. No. 93-001, § 10, 3-10-93)

Sec. 2-141. Same-Formal bid procedure.

(a) *Conditions for use.* Any single purchase of goods or services, not professional services customarily negotiated, which involves an expenditure of twenty-five thousand dollars

(\$25,000.00) or more shall be purchased by a formal bid procedure from the lowest responsible and responsive bidder after at least fifteen (15) days' public notice inviting bids. The aforementioned twenty-five thousand dollars (\$25,000.00) competitive bid requirement may, at the discretion of the town council, be modified from time to time, by town council resolution. The formal bid procedure shall include the following:

(1) *Invitation for bids.* An invitation for bids shall be issued to all responsible prospective suppliers who have requested their names be added to a bidder's list for a particular class of goods or services, or by notice of a pending purchase posted on a public bulletin board in the town office, or periodic advertisements for additions to the bidder's list, or by such other public notice as may be deemed necessary by the town.

(2) *Cancellation.* The town manager may, for good cause, cancel any invitation for bids or other solicitation.

(3) *Bid submission.* Submission of sealed bids to the town on the official town bid form or on the contractor's own stationery in a format and with contents conforming to the town's bid form and in a bid envelope furnished by the town.

(4) *Bid opening.* Bids shall be opened in public, in the presence of one (1) or more witnesses, at the time and place stated in the invitation for bids and public notices. The amount of each bid and such other relevant information as is deemed appropriate shall be recorded. The, record and each bid shall then be available for public inspection.

(b) *Correction or withdrawal of bids.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening may be permitted, as provided herein. Mistakes discovered before bid opening may be modified or withdrawn by written [or telegraphic] notice received in the office designated in the invitation for bids prior to the time set for bid opening. Mistakes discovered after bid opening resulting in downward correction of a bid, which would displace the apparent low bidder, shall only be permitted if the error made and the intended bid price can be determined by the town solely from the bid documents, e.g., unintentional arithmetic errors. Upward correction of a bid, established solely from bid documents, shall be permitted only if the town manager finds in writing that the mistake was inadvertent and bona fide and that it would be unconscionable to require the bidder to enter into a contract at the bid price. All decisions to permit the correction or withdrawal of bids based upon bid mistakes shall be supported by a written determination made by the town manager.

(c) *[Subdivision of sale to avoid bidding requirements.]* No purchase or sale shall be subdivided or project broken into increments to avoid the intent of the competitive bidding requirements.

(d) *[Bid Deposits.]* When deemed necessary by the town manager, bid deposits may be required. A successful bidder shall forfeit any deposit required upon failure on his or her part to enter into a contract within the time specified in the invitation for bids after award is made.

(e) *[Payment of bonds.]* Before any construction contract exceeding twenty-five thousand dollars (\$25,000.00) in amount is awarded, the successful bidder shall furnish to the town those payment and performance bonds required by the town. The amount of such bonds will be specified in the bid invitations. The bonds shall be payable to the town and approved by the town attorney as to form. Bidders who regularly do business with the town may file with the town an annual performance bond and payment bond in an amount to be established by the town manager and approved as to form by the town attorney in lieu of furnishing individual bonds with each bid. The bonds shall be in an amount satisfactory to cover all contracts in force at any one time. Nothing in this paragraph shall be construed to limit the authority of the town to require a performance bond or other security in addition to, or in cases other than, the cases reduced by this paragraph.

(f) *[Rejection of bids.]* The town manager may reject all bids or parts of bids when the public interest will be served thereby.

(g) *[Other factors determining responsibility.]* In addition to price, the following factors, which are not intended to be exclusive, shall, where appropriate, be considered in determining whether the bidder is responsible:

- (1) The ability, capacity, organization, facilities and skill of the bidder to perform the contract or provide the goods and services required.
- (2) The ability of the bidder to perform the contract or provide the service within the time specified without delay, interruption or interference.
- (3) The integrity, reputation and experience of the bidder.
- (4) The quality of performance of previous contracts or services and past unsatisfactory performance, for any reason, shall be sufficient to justify a finding of nonresponsibility.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service.
- (6) The sufficiency of the financial resources of the bidder to perform the contract or provide the service.
- (7) General experience and technical competence.
- (8) Past performance record on other town projects.
- (9) Related experience on similar projects.
- (10) Compatibility of size of firm with size of proposed Project.

- (11) Current total workload of the contractor and the capacity to accomplish the proposed work in the required time.
- (12) Special familiarity with project or project site.
- (13) Adequacy of office facilities where services will be rendered.
- (14) Financial responsibility and ability of the contractor to provide adequate insurance protection.
- (15) Quality of solution.

(h) *[Default.]* In determining responsibility, the town manager shall also ascertain whether the bidder is in default of the payment of any money due the town, including performance bond, and may deny the award of a contract to any bidder who is in default.

(i) *[Tie bids.]* Tie bids from two (2) or more responsible bidders shall be resolved by drawing lots in public.

(j) *[Prequalification.]* The town manager is authorized to employ a method whereby suppliers wishing to pre-qualify to do business with the town and to receive invitations for bids and requests for proposals are assured the opportunity to do so; provided that prequalification of a supplier will not preclude the town from determining.

- (1) Between the time of the bid opening or receipt of offers and the making of an award, that a prequalified supplier is not responsible.
- (2) That suppliers who are not prequalified as of the time of bid opening or receipt of offers are responsible.

Suppliers seeking to prequalify in order to receive invitations for bids and requests for proposals may present evidence that they have the financial and technical ability, resources and facilities to act as suppliers to the town. The town shall consider the criteria set forth in subsections (g) and (h) of this section in determining qualifications.

(k) *[Other determining factors.]* The following factors shall be considered as appropriate in determining whether a bid is responsive to the terms and specifications of the invitation to bid and in evaluating the full cost for the goods and services solicited:

- (1) Conformance with the terms and specifications of the invitation to bid.
- (2) The nature and scope of conditions attached to the bid.

- (3) Length of usable life and operating costs of the particular goods specified compared to competitive goods being offered by the bidder and, where applicable, the degree and quality of service being offered by the bidder.
- (4) Maintenance and service requirements which shall include, but not be limited to, the following. Availability, cost, quality and delivery of parts and service for the particular goods or services being offered by the bidder, and the incremental cost of town maintenance of spare parts inventory.
- (5) Environmental impact of the particular goods and services being offered.
- (6) The resale value of the subject of the contract.
- (1) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

Sec. 2-142. Competitive negotiation.

When, after required bidding or solicitation, no bids are received or none of the bids received meets town requirements in whole or in part by reason of specification deficiencies, price or funds available or factors of responsibility, the town manager can then be authorized by the town council to enter negotiations with those solicited or the lowest responsible bidder who most nearly complies with bid invitations to attempt to reach a negotiated acceptable bid. Prior to such negotiations, all those solicited shall be given written notification of the town's intent to so negotiate. No negotiations shall commence until the time specified for bid protests has elapsed and no award shall be made under this section while a bid protest is pending a final decision by the town, except with the written approval of the town council. The town at all times shall reserve the right to rebid or to reject all bids. If there is only one (1) bid, such negotiations with the bidder are also authorized for the same purposes. Before this method of procurement is authorized by the town council, a written determination by the town manager shall be made indicating that the aforesaid circumstances occurred and further competitive bidding would be impractical and not in the best interest of the Town.

Sec. 2-143. Sole Purchases and Contracts.

When the town requires goods or services which are available from only one (1) source or manufacturer, the town council may authorize the town manager to purchase such goods or services by obtaining the lowest possible price and the best possible service by one (1) of the following alternative methods:

- (1) Purchase directly from the one (1) supplier without the necessity of obtaining competitive bids or proposals.

- (2) Purchase directly from an exclusive franchised dealer without the necessity of obtaining competitive bids or proposals.
- (3) Purchase from authorized dealers or distributors by obtaining competitive bids or proposals.

Before this method of procurement may be authorized by the town council, a written determination shall be made by the town manager that the specifications for the required goods or services are not overly restrictive for the town's needs, competitive bidding is impractical based upon past experience that only a sole source supplier for the particular goods or services exists, and the sole source procurement serves the best interest of the town.

Sec. 2-144. Open-Market Procedures.

All purchases of goods or services estimated to cost less than the twenty-five thousand dollar threshold for competitive bidding, as adjusted, by the town council pursuant to Section 2-142, may be made in the open market without observing the formal bid procedure. All open-market procurements shall, where feasible, be based on competitive price quotations and shall be awarded to the lowest responsible and qualified supplier, in accordance with the standards set forth in this article.

Sec. 2-145. Cooperative Procurement.

(a) Notwithstanding any other provisions of this article, the town manager may contract with any supplier who offers goods or services on the same terms as provided other federal, state or local governments, or agencies thereof, who have arrived at those terms through a competitive procurement procedure similar to the town's and where the town manager finds that the cost of the items to be purchased is equal to or less than that which could be obtained by competitive bidding.

(b) The town manager may also contract directly with federal, state or local governments, or agencies thereof, for goods or services when such goods or services were obtained through competitive procurement procedures.

(c) The town manager may contract with any federal, state or local government, or agency thereof, to provide or receive any work or services of the type the town or such other government or agency performs for its jurisdiction.

(d) The town manager may join with other units of government in cooperative purchasing plans when the best interest of the town would be served thereby.

Sec. 2-146. Contracts for professional services-Policy.

To assure that the selection of professional contractors or contracts that exceed twenty-five thousand dollars (\$25,000.00) does not become arbitrary, and to increase the visibility

of and public trust in the participants and the process of selection and negotiating contracts where price is only one (1) of many selection criteria, the following selection process set forth before shall be followed .

Sec. 2-147. Same Professional Contractor Selection Process.

(a) The town manager shall determine appropriate professional contractors, interview those who appear to be highly qualified and will identify, where practical, the three (3) most qualified using, among others, the following criteria:

- (1) General experience and technical competence.
- (2) Past performance record on other town projects.
- (3) Related experience on similar projects.
- (4) Number and value of recent town projects assigned to the contractor.
- (5) Compatibility of size of firm with size of proposed project.
- (6) Knowledge of local conditions, codes and ordinances where such knowledge is essential to the proper performance of the contract.
- (7) Current total workload of the contractor and the capacity to accomplish the proposed work in the required time.
- (8) Special familiarity with project or project site.
- (9) Special qualifications, experience, design approach, etc.
- (10) Originality and design quality of previous work.
- (11) Adequacy of office facilities where services will be rendered.
- (12) Interest of consultant's management and participation of key officials in the project.
- (13) Financial responsibility and ability of the contractor to provide adequate insurance protection.
- (14) Quality of proposal and/or solution.

(b) The town manager will, where practical, identify three (3) potential professional contractors listed in order of preference, and submit the list to the town council for evaluation along with documentation and justification for the selection.

- (1) Upon town council receipt and approval, the town manager will seek to negotiate a contract with the potential contractor.
- (2) If a contract cannot be successfully negotiated with the first preference, the town mayor or treasurer shall be notified in writing as to the reasons for failure of negotiations. The town manager may then, without delay, seek to negotiate a contract with the second preference and, if unsuccessful, the third preference; provided, however, that nothing herein shall preclude the town council from authorizing concurrent negotiations with all contractors if such procedure serves the best interests of the town.

[Sec. 2-148. **Same-Architect-engineer services.**

- (a) *Policy.* It is the policy of the town to announce publicly all requirements for architectural and engineering services in excess of eight thousand dollars (\$8,000.00), and to negotiate contracts for [architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and, at fair and reasonable prices.
- (b) *Negotiation.* After completion of the contractor qualification and selection process provided herein, the town shall negotiate with the highest qualified firms for a contract for architectural and engineering services at compensation, which the town council determines to be fair and reasonable to the town. In making such determination, the town council shall take into account, in the following order of importance, the professional competence of offerors, the technical merits of offers and the price for which the services are to be rendered.]

Section 2.

Add a new Section 2-148 entitled "Informal Solicitation" and renumber existing Section 2-149 entitled "Disposition of Goods" as Section 2-150. New Section 2-149, entitled "Informal solicitations." to read as follows:

Sec. 2-148. **Informal solicitation.**

- (a) Any purchase of professional goods or services not exceeding twenty-five thousand dollars (\$25,000) may be made in accordance with informal procurement procedures established by the Town Manager that provide for informal solicitation of proposals or offers.
- (b) The award shall be made to the lowest responsive and responsible professional supplier. The name of the person submitting a proposal or offer shall be recorded and maintained as part of the contract file.

Sec. 2-149. Disposition of Goods.

(a) Except as provided herein, all goods which have become surplus, obsolete or unusable and whose current estimated value is two thousand five hundred dollars (\$2,500.00) or more shall be sold to the highest responsible bidder by the competitive bid or proposal procedures prescribed in Sections 2-140 and 2-141 of this division, except that the goal shall be to obtain the highest price from prospective purchasers. The town manager may waive the competitive bid or proposal procedures and sell such property by auction or by private sale after reasonable public notice when the return to the town is expected to be increased by this procedure or the nature of the goods is such as to make competitive bid or proposal procedures impractical.

(b) Goods which have been found by the town manager to have become surplus, obsolete or unusable, and whose current estimated value is less than two thousand five hundred dollars (\$2,500.00), may be disposed of by the methods described for purchases in Section 2-142 through 2-145 of this division. Such dispositions shall, wherever feasible, be based on competitive price quotations, and shall be made to a responsible purchaser offering the highest price. In order to produce the highest return for the disposition of such personal property, the town manager may select from the following disposition methods, the one that will yield the greatest return under the circumstances of each disposition: competitive sealed bid; competitive sealed proposal; any of the methods described in Sections 2-142 through 2-145 of this division; competitive auction sale; or trade-in or exchange for goods which are of current need. A disposition may be negotiated when the above methods are inappropriate or have failed to produce a fair price or value. Under exceptional circumstances, where the town manager has made an express written finding, such goods may be loaned or sold below fair market value, or given as a gift or sale would result in a public benefit to the residents of the town of more value than other methods of disposition.

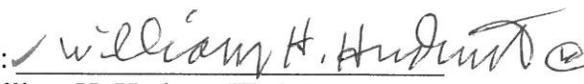
(c) If the town manager determines, in writing, that strict compliance with these provisions impedes the progress of a construction contract for a capital project to the detriment of the best interests of the town, the town manager may waive these provisions and authorize disposal of the surplus goods in the most practical manner.

(d) In the event the town manager determines, in writing, that the goods offered for disposal have no real or scrap value, they may be disposed of as refuse.

Attest:

By: 
Scott Orbach, Secretary

TOWN OF CHEVY CHASE

By: 
William H. Hudnut, III., Mayor