

TOWN OF LIBERTY GROVE
RESOLUTION 6-23 PROCUREMENT POLICY

General

1. Purpose. This Town of Liberty Grove Procurement Policy ("Procurement Policy") establishes the process to be followed by the Town before entering into certain covered contracts.

Procurement Requirements Under State Law

2. Adoption of State Standards. The Town shall abide by Wis. Stat. § 60.47 and any other applicable Wisconsin statutes prior to entering into a contract for the construction, execution, repair, remodeling, or improvement of any public work or building or for the furnishing of materials or supplies, with an estimated cost greater than \$5,000.

Procurement Requirements Under Federal Law

3. Procurement Standards Mandated by Federal Law. If a Town contract will be funded by federal grant funds and if adherence to federal procurement laws is required, the Town shall follow the remainder of this Procurement Policy, as applicable. If adherence to federal procurement laws is not required, the remainder of this Procurement Policy does not apply.
4. Micro-Purchases.
 - a. *Micro-Purchase Threshold Established.* In accordance with 2 CFR § 200.320(a)(1)(iv)(C), the Town self-certifies that its micro-purchase threshold shall equal \$25,000. The self-certification is based on Wis. Stat. § 60.47, which only requires towns to competitively bid public works contracts in excess of \$25,000.
 - b. *Annual Review of Micro-Purchase Threshold.* The Town shall review its self-certified micro-purchase threshold annually. If Wisconsin's bidding laws have not changed and the Town has not taken any formal action to revise its self-certified micro-purchase threshold, the Town will have been deemed to have self-certified the micro-purchase threshold used from the previous year.
 - c. *Contracts Equal to or Below the Micro-Purchase Threshold.* For contracts where the estimated contract costs do not exceed the Town's self-certified micro-purchase threshold, the Town shall abide by any requirement imposed under Section 2 of this Procurement Policy. If no bid is required, the Town may enter into a contract if, based on research, experience, purchase history or other information, the price is reasonable. The Town shall also follow Sections 11 through 17 of this Procurement Policy.
5. Simplified Acquisitions.
 - a. *Simplified Acquisitions Threshold.* The simplified acquisition threshold is defined by 48 CFR § 2.101. As of 2023, the simplified acquisition threshold is \$250,000.

- b. *Contracts for Small Purchases (Between the Micro-Purchase Threshold and the Simplified Acquisition Threshold).* For contracts where the estimated contract costs are greater than the Town's self-certified micro-purchase threshold but less than the federal simplified acquisition threshold, the Town shall competitively bid projects in conformance with Sections 2 of this Procurement Policy. The Town shall also follow Sections 9 and 11 through 17 of this Procurement Policy.
- 6. Contracts Exceeding Simplified Acquisition Threshold. For contracts where estimated contract costs exceed the federal simplified acquisition threshold the Town shall competitively bid projects in conformance with this Section 6. The Town shall also follow Sections 9 through 17 of this Procurement Policy.
 - a. *Lowest Responsible Bidder.* The Town shall only select contractors through a full and open competition and all contracts shall be awarded to the lowest responsible bidder based on sealed bids.
 - b. *Advertisement.* The project shall be publicly advertised and provide bidders sufficient time to respond. For advertising purposes, the Town shall, at a minimum, comply with the requirements of Wis. Stat. § 60.47.
 - c. *Specifications.* The Town will develop a clear and accurate description of the technical requirements for the material, product, or service to be procured that does not unduly restrict competition. The specifications will identify all requirements that contractors must fulfill.
 - d. *Opening of Bids.* Bids shall be opened publicly at the time and place specified by the bid invitation.
 - e. *Rejection of Bids.* Any or all bids may be rejected if there is a sound documented reason.
- 7. Request for Proposal Exception to Sealed Bid Requirement for Large Contracts. For contracts required to follow Section 6, the Town may select a contractor without using sealed bids if the Town Board determines that it may seek proposals for a fixed price or cost-reimbursement contract. Contracts awarded using proposals must adhere to the following requirements:
 - a. The requests for proposals must be publicized and identify all evaluation factors along with their relative importance.
 - b. Proposals must be solicited from an adequate number of qualified offerors.
 - c. The Town must prepare a written method for conducting technical evaluations of the proposals received and making selections.
 - d. The contract must be awarded to the responsible offeror whose proposal is the most advantageous to the Town, as determined by the Town Board.

8. Exception for Architectural and Engineering Services for Large Contracts. For contracts required to follow Section 6, the Town may use competitive proposal procedures pursuant to Section 7 for architectural or engineering services where the qualifications are evaluated and the most qualified entity is selected, subject to negotiation of fair and reasonable compensation. Price is not required to be a selection factor for architectural or engineering services. The Town cannot use this method to purchase other types of services through architectural or engineering firms that are a potential source to perform the proposed project.
9. Exceptions to Competitive Procurement Process. The Town may use a noncompetitive procurement (which requires following Section 15) if any of the following apply:
 - a. The item is only available from a single source.
 - b. There is a public emergency where the Town cannot delay in awarding the contract.
 - c. The federal agency awarding the grant or funds expressly authorizes a noncompetitive procurement.
 - d. After solicitation of a number of sources, competition is determined inadequate.

Federal Procurement General Requirements

10. General Procurement Standards for Large Projects. For all contracts exceeding the federal simplified acquisition threshold, the following general standards apply:
 - a. *Cost Analysis Required.* The Town shall perform a cost or price analysis pursuant to Section 15 in connection with every procurement action in excess of the simplified acquisition threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation but shall include making independent estimates before receiving bids or proposals.
 - b. *Responsible Bidders Required.* The Town shall only award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. In determining if a contractor is responsible, the Town can consider factors including but not limited to:
 1. The integrity of the contractor.
 2. The contractor's past performance of contracts or projects.
 3. The financial and technical resources of the contractor.
 - c. *Limitation on Bidders.* Contractors that assist in developing specifications for the project to be bid cannot submit bids.
 - d. *Bonding.* The following bonding requirements shall apply to construction or facility improvement contracts:

1. Each bidder must submit a bid guarantee equal to five percent of the total bid price.
 2. The selected contractor must submit a performance bond for 100 percent of the contract price
 3. The selected contractor must submit a payment bond for 100 percent of the contract price.
- e. *Preference Against Estimated Costs.* The Town's strong preference shall be to select contractors that do not use estimated costs in their bids. However, the Town may accept time and materials type contracts (defined a contract whose cost to the Town is the total of the actual cost of materials and the direct labor hours charged at fixed hourly rates) only if it determines that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.
11. General Procurement Standards for All Projects. For all contracts involving the use of federal funds, the following general standards apply:
 - a. *Records to be Retained.* The Town shall maintain records, pursuant to its records retention policy, of its procurement history involving the use of federal funds.
 - b. *Avoidance of Duplication.* The Town shall avoid acquisition of unnecessary or duplicative items.
12. MBE Procurement Policy. For all contracts involving the use of federal funds, the Town shall take the following steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible:
 - a. Placing qualified small and minority businesses and women's business enterprises on any solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a) through (e) of this Section 12.

13. American Sourcing. When required by federal law, the Town should, to the greatest extent practicable provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.
14. Solid Waste Disposal. The Town shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; and procuring solid waste management services in a manner that maximizes energy and resource recovery.
15. Profit Considerations. The Town shall negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is required pursuant to Section 10(a). To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
16. Additional Federal Requirements. Every contract executed by the Town involving the use of federal funds shall include all provisions required by 2 CFR § 200.327 and 2 CFR Part 200, Appendix II, available at <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/appendix-Appendix%20II%20to%20Part%20200>.
17. Conflict of Laws. If any federal provision conflicts with state law, the federal requirement shall apply for projects that require adherence to federal law. Where state law is more restrictive than federal law, state law shall apply.

Adopted by the Town Board of the Town of Liberty Grove on May 12, 2023.

Anastasia Bell, Clerk/Treasurer