

Purchasing Policy

The Town is committed to Green Purchasing practices in obtaining goods and services. To that end, environmentally preferable products are defined as materials or products that are durable, repairable, reusable, or recyclable; have a minimum of packaging, toxic content or chemical hazard potential; are resource or energy efficient in any or all phases of their manufacture, use, and disposal; or in their use or disposal minimize or eliminate the Town's potential environmental liability.

The Town shall fully consider environmentally preferable products and services when appropriate. However, nothing in this policy shall be construed as requiring a purchaser or contractor to procure products that do not perform adequately for their intended use, exclude adequate competition, or are not available at a reasonable price in a reasonable period of time.

SECTION I – CONFLICT OF INTEREST POLICY

Except as may be disclosed to and permitted by the City Council, it shall be a breach of this policy for any employee to participate directly or indirectly in the purchasing process when the employee knows that:

1. The employee is contemporaneously employed by a bidder, vendor or contractor involved in the procurement transaction; or
2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest in the company; or
3. The employee, the employee's partner, or any member of the employee's immediate family has a financial interest arising from the procurement transaction; or
4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, vendor or contractor.

The employee's immediate family shall be defined as a spouse, children, parents, brothers and sisters and any other person living in the same household as the employee.

It shall be the responsibility of the City Manager to determine if a violation of this Conflict of Interest policy has occurred and if disciplinary action is necessary in accordance with the Town's Personnel Code.

SECTION II -- AUTHORITY TO PURCHASE

- A. \$3000 or LESS: Department Heads, or other authorized employees, as designated by the City Manager, have the authority to approve purchases. It is the Department Head's responsibility to insure that unencumbered funds are available and that the most competitive prices are being obtained. All purchases, regardless of dollar amount, will require a Requisition, except for Field Purchase Orders.
- B. ABOVE \$3000 to \$20,000: A Requisition for a purchase must include reference to a minimum of 3 quotes obtained from vendors OR sufficient justification to warrant the purchase of an item from a specific vendor.
- C. ABOVE \$20,000: Purchases require sealed bids and City Council approval. In some instances, (sole source, emergency purchase, Joint Purchasing) Council may waive formal bidding. Council approval to waive formal bidding MUST be granted prior to the Purchase Order being issued. Purchase Orders will be issued immediately after Council approval. Refer to Section III (J) for instructions on obtaining sealed bids.
- D. APPROVED BUDGET ITEMS/STATE JOINT PURCHASING: The purchase of items available through state joint purchasing or through the United States Conference of Mayors (U.S. Communities Marketplace) or other joint purchasing agreement as approved from time to time by the City Manager which are included in the currently approved annual budget and whose cost exceeds \$20,000, may be made without prior Council approval. Items exceeding \$3,000 meeting the above criteria may be purchased without obtaining quotes. It is the responsibility of the Department Head to assure that the item is funded in the currently approved budget. The Department Head will inform the Finance Department under comments on a Requisition if the item to be purchased is in the currently approved annual budget.
- E. EMERGENCY PURCHASES: Department Heads shall be authorized to make emergency purchases, not exceeding \$20,000, in cases where failure to do so could result in an immediate and apparent loss to the Town. The City Manager, or his designee, shall be notified of an emergency purchase at the first opportunity by the Department Head. All emergency purchases in excess of \$20,000, using the Requisition/Purchase Order process, which normally require formal bids, can only be authorized by the City Manager. Finance shall be notified immediately and shall provide any necessary assistance. When emergency purchases exceed \$20,000, the City Manager shall render a full report to the City Council at or before its next regularly scheduled meeting.
- F. EXEMPTIONS: In some instances, it will be difficult or result in unnecessary effort to conform to the previous regulations. Examples would be the purchase of office furniture or carpeting to match existing; the purchase of a second item, the first of which had been bid the month before; etc. If the Department Head believes that compliance with these regulations would result in undue, unnecessary effort, contact the Finance Department and provide justification for an exemption from these regulations. The City Manager may grant exemptions from the foregoing rules if conformance with the regulations would result in undue hardship or unnecessary effort to the Town.
- G. PROHIBITIONS: Employees are hereby prohibited from purchasing any item in the name of the Town for personal use. Employees are further prohibited from using their status as a

Town employee to coerce special consideration in the purchase of goods and/or services for personal use.

SECTION III -- BIDDING

Bidding is the method of purchasing goods and services through formal written solicitations. The Town requires bidding on all purchases in excess of \$20,000 (except as discussed in Section II). Purchases for amounts less than \$20,000 MAY also be bid.

Responsible bidder for construction contracts for projects which require the payment of prevailing wages under the Town of Normal Prevailing Wage Ordinance, means a bidder who meets all of the job specifications as required in the bid documents as determined by the Town of Normal and has in place an apprenticeship and training program with craft specific programs approved and registered with the United States Department of Labor's Bureau of Apprenticeship and Training. The foregoing shall not apply to contracts less than \$100,000 in value nor to contracts determined by the City Manager to be an emergency purchase.

Additionally the Town has adopted a "Local Preference Policy".

This policy is adopted to give some preference, for the purchase of goods and/or services, to local businesses. It is acknowledged that local businesses share their income with the community in a variety of ways including the payment of taxes, creation of jobs, donations to local charities, membership in local organizations such as the Chamber of Commerce, sponsorship of local events and organizations, etc. The Town of Normal believes that such significant local contributions should be recognized when purchasing goods and services. Therefore, the Town seeks to provide such recognition by establishing a policy to give local businesses some preference when purchasing goods and services.

The Town acknowledges, however, that any preference of local businesses shall not result in burdensome and/or unreasonable costs to the taxpayers of the community nor should it restrict the Town from rejecting inferior products or services. This policy shall not apply in situations where external funding sources do not permit local preference purchasing allowances and in situations where the goods or services being purchased are available through a cooperative purchasing program such as the US Communities Government Purchasing Alliance and the State of Illinois Cooperative Purchasing Program. As is the case with all policies, the Town reserves the right to waive or amend this policy when it deems appropriate.

It shall be the policy of the Town of Normal that a bidding preference shall be granted to bidders in a competitive bidding situation on the following scale:

- 5.0% up to a maximum of \$2,500 on bids of \$10,000 up to \$50,000
- 4.0% up to a maximum of \$10,000 on bids of up to \$250,000
- 3.0% up to a maximum of \$30,000 on bids of up to \$1,000,000
- \$50,000 on bids of over \$1,000,000

The preferential discount will be applied to the low bid of all "Local Bidders" when determining the lowest responsible bid. This policy shall apply to the purchase of all goods and services that are purchased via a competitive bidding process with a total cost of \$20,000 or greater.

A “Local Bidder” shall be defined as any business that meets all of the following criteria:

- The business has established and maintained a physical presence within the County of McLean, via the ownership or lease of a building or a portion of a building, for a period of not less than 12 consecutive months; and
- The business employs a minimum of two (2) full time employees at the McLean County location and that those employees spend the majority of their work day and work week at the McLean County location; and
- The business is legally authorized to conduct business within the State of Illinois and the County of McLean.

Local bidders shall indicate on the bid submission that the business qualifies as a “Local Bidder” under this policy. The Town of Normal will not be responsible for investigating whether or not a business qualifies as a local bidder if such indication is not included on the submitted bid. The City Manager shall have the sole and final authority to resolve any disputes that may arise over this policy.

A. INVITATIONS TO BID: Invitations to Bid shall be advertised at least once in a local newspaper or on the Town’s internet. The bid package shall be submitted to the Finance Department for approval prior to being sent to the Office of the City Clerk, which shall be responsible for forwarding the Invitation to the publisher. The advertisement for bid shall appear in the publication not less than ten (10) days prior to bid opening.

Invitations to Bid shall include a general description of the articles to be purchased, state the location and times that Bid Packages may be obtained and state the date, time and place of the bid opening.

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State statute prohibits any Town employee from discussing any information concerning the specifications of a bid or potential subcontractors outside the publicly available official invitation to bid, or pre-bid conference.

B. INSTRUCTIONS TO BIDDERS: All bid packages shall include Instructions to Bidders properly notifying the bidder of Town policies and procedures related to bidding.

C. PRE-BID CONFERENCE: Departments are encouraged to schedule a pre-bid conference, sufficiently in advance of a bid opening, to explain the Town’s policies, procedures, and specifications and hear questions from prospective bidders.

D. SPECIFICATIONS: Finance and the department are jointly responsible for the preparation of specifications. The specifications shall state the standards acceptable to the Town, but shall not be overly restrictive so as to limit the number of bidders. Brand names may be used as a guideline; however, vendors are invited to submit items of equal or greater value/performance.

E. BID DEPOSITS: All construction bids in excess of \$20,000 shall require a bid deposit in an amount of five (5%) percent of the NET bid. THE FINANCE DIRECTOR, OR HIS DESIGNEE, MAY WAIVE THIS REQUIREMENT WHEN IT IS DEEMED IN THE BEST

INTEREST OF THE TOWN. The Department Head with approval of the Finance Department shall determine the amount of the bid deposit. A bid deposit shall be in the form of a Certified Bank Check, Cashier's Check, or Bid Bond. The Town as a guarantee will retain this deposit that the bidder fulfills the terms of the bid. After award of the contract, unsuccessful bidders shall promptly have their bid deposits returned. The Department Head shall notify the Town Clerk as to when the bid deposits are to be returned.

- F. **PERFORMANCE/PAYMENT BONDS:** The successful bidder on all construction and capital improvement projects in excess of \$20,000, shall furnish a Performance/Payment Bond equal to one hundred (100%) percent of the total bid. The Performance/Payment Bond shall be furnished before any contracts are executed or work commences. The company acting as surety for any bond issued shall be licensed to do business in the State of Illinois. Invitations to Bid shall clearly state that a Performance/Payment Bond will be required.

The Performance/Payment Bond shall be in a form acceptable to the Finance Director. Failure to post a satisfactory Performance/Payment Bond shall be grounds to forfeit the bid bond.

- G. **BID PROPOSAL FORM:** All bids shall be submitted on a bid proposal form supplied by the Town. If several items are being bid at one time and a vendor cannot bid on all items, the vendor should mark all items on which they are not bidding with the words "No Bid". Care should be exercised that all amounts on the bid are correct. Extensions (sum total of multiple items) should be checked to insure accuracy. Prices must be either in ink or typewritten.

Any corrections must be initialed in ink by the person signing the original bid proposal. In case of a difference between unit price and extension, the lowest price shall be deemed correct. An appropriate officer or employee of the company bidding must sign the proposal.

- H. **HOLD HARMLESS:** To the fullest extent permitted by law, the Contractor/Vendor must agree to defend, indemnify and hold harmless the municipality, its officers, agents and employees, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, cost and expenses, which may in any wise accrue against the municipality, its officers, agents and employees, arising in whole or in part or in consequence of the performance of this work by the Contractor/Vendor, its employees, or subcontractors, or which may in any wise result thereafter, except that arising out of the sole legal cause of the municipality, its agents or employees. The Contractor/Vendor shall at its own expense, appear, defend and pay all the charges of attorneys and all costs and other expenses arising therefore or incurred in connections therewith, and, if any judgment shall be rendered against the municipality, its officers, agents and employees, in any such action, the Contractor/Vendor shall, at its own expense, satisfy and discharge the same. Contractor/Vendor expressly understands and agrees that any performance bond or insurance policies required by this contract, or otherwise provided by the Contractor/Vendor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the municipality, its officers, agents and employees has herein provided.
- I. **SAMPLES:** If samples are to be submitted with a bid, they will be held until a bid award is made. Should a vendor wish to submit a sample for trial use, the product must be presented at no cost or obligation to the Town.

- J. **SUBMITTING BIDS:** All bids must be sealed and marked as indicated in the Instructions to Bidders and must be received before the time stated for the opening of bids. As a safeguard against tampering with bids, upon receipt the Town Clerk shall stamp the sealed envelope containing the bids. Bids shall be placed in a vault or other locked receptacle until the time specified for opening. Under no circumstances shall the bids leave the Town Clerk's control until after bids are opened and publicly read aloud.
- K. **WITHDRAWAL/CHANGE OF BIDS:** Bidders have the right to withdraw their bids or to make changes to their bid prior to the bid opening. A bidder may withdraw his bid by submitting a written request to the Town Clerk. No bid may be withdrawn after the closing time for receipt of bids. Changes to bids shall be accomplished by submitting a new Bid Form with the notation "Revised Bid" and the date of submission to the Town Clerk prior to bid opening. This change shall be submitted in a separate envelope marked the same as the original bid with the words "Revised Bid" and the date the revision is submitted. At the bid opening, the Town Clerk shall announce that a revision has been submitted and the date the revision was submitted. Upon opening of the bid, the Town Clerk shall open the envelope with the revision, read the revised price, and add the revised form to the original bid packet.
- L. **OPENING OF BIDS:** Bid proposals will be publicly opened and read aloud in a designated place on the date and time specified in the Invitation to Bid. The Town Clerk or authorized representative shall preside at all bid openings. The Department Head involved or the Finance Director, or his designee, shall witness the bid openings. Upon opening, all bid packages become a matter of public record and will be available for further inspection in the Office of the Town Clerk.
- M. **LATE BIDS:** No bids shall be accepted after the stated time of the bid opening. Any bid received late shall remain unopened and returned to the bidder.
- N. **TABULATION AND ANALYSIS:** After opening, the Clerk shall provide all bids to the Department Head involved. The Department Head shall tabulate the bids to include the name of the bidder, bidder's address, confirmation of bid deposit, unit prices and total bid price. Original bids, along with the tabulation, shall be returned to the Clerk and placed on file and made available to any interested party. The Department Head shall send a copy of the tabulation to the Finance Director, or his designee, and the Office of the City Manager, along with the Department Head's recommendation.

If an award to other than the lowest bidder is recommended by the Department Head, justification must be made, in writing, to the Finance Director, or his designee. The Finance Director, or his designee, shall then provide a written recommendation to the City Manager. The City Manager will make the final recommendation to the City Council.

The following factors shall be used in determining the lowest responsible bid:

1. The ability, capacity and willingness of the bidder to perform the contract or provide the service required.
2. Whether the bidder can perform the contract or provide the service promptly or within the time specified without delay or interference.

3. The reputation, judgment, relevant experience and efficiency, as determined by contact with prior customers, of the bidder. The bidder shall furnish to the Department Head involved a minimum of three (3) previous clients for whom the same or similar work was performed.
 4. The previous and existing compliance by the bidder with laws and ordinances relating to the contract, purchase or service.
 5. The equipment, personnel, and facilities available to the bidder to perform the contract or provide the services.
 6. The quality, availability, and adaptability of the supplies, materials, equipment or services to the particular use required.
 7. The ability of the bidder to provide maintenance and service.
 8. The amount and conditions, if any, of the bid.
 9. Previous experience providing products or services to the Town.
- O. REJECTION OR WAIVING TECHNICALITIES IN BIDDING: The City Council reserves the right to reject any and all bids and to waive technicalities in bidding if such action is deemed to be in the best interests of the Town. The City Manager shall recommend to the City Council when a bid should be rejected and technicalities waived. The ultimate authority to accept, reject or waive technicalities rests with the City Council.
- P. AWARD OF BIDS: The City Council has the final authority in awarding bids. After the City Council has voted to accept the most responsible bid, the Department Head shall issue a Purchase Order to the successful bidder. The purchase is not consummated until the vendor receives the Town's Purchase Order.
- Q. APPEAL AND INSPECTION OF BIDS: A bidder wishing to appeal a bid award must present a written appeal to the City Manager.
- R. CHANGE ORDER NOTIFICATION(720 ILCS 5/33 E-9): Illinois state law defines a change order as "a change in a contract term other than as specifically provided for in the contract which authorizes or necessitates any increase or decrease in the cost of the contract or the time to completion."

The below shall apply only to a change order or a series of change orders which authorize or necessitate an increase or decrease in either the cost of a contract by a total of \$10,000 or more or the time of completion by a total of 30 days or more.

Any change order shall be made in writing. Prior to any change order, the individual granting the change order must make a determination, in writing that, (1) the circumstances said to necessitate the change in performance were not reasonably foreseeable at the time the contract was signed, or (2) the change is germane to the original contract as signed, or (3) the change order is in the best interest of the unit of government and authorized by law.

The City Manager shall review the requested Change Order and approve it if he finds one or more of the above reasons justify such approval. Council shall be notified of each change subject to this provision.

PROJECT CONTRACT CHANGE ORDER ACT 50 ILCS 525/1: If a change order for any project public works contract (i) is entered into by a unit of government or school district, (ii) is not procured in accordance with the Illinois Procurement code and the State Finance Act, and (iii) authorizes or necessitates any increase in the contract price that is 50% or more of the original contract price or that authorizes or necessitates any increase in the price of a subcontract under the contract that is 50% or more of the original subcontract price, then the portion of the contract that is covered by the change order must be resubmitted for bidding in the same manner for which the original contract was bid. Bidding for the portion of the contract covered by the change order is subject to any requirements to employ females and minorities on the public works project that existed at the bidding for the original contract, together with any later requirements imposed by law.

- S. **PREVAILING WAGES:** The Town of Normal requires that contracts subject to the Prevailing Wage Act comply with the requirements of such Act. All information and proof of compliance with the law needs to be filed in a timely manner with the Town. The Department of Labor website contains the law and applicable forms. <http://www.state.il.us/agency/idol/laws/Law130.htm>.
- T. **ACCEPTANCE OF WORK:** Before any work, equipment or services are accepted, invoice paid or Performance Bond returned, the Department Head shall inspect the materials, equipment, or services performed to insure that all conditions of the contract have been met. If all conditions have been met, the Department Head shall notify the Finance Department by issuing a receipt against the purchase order for payment. If any condition(s) have not been met, the Department Head shall notify the Finance Department, in writing, of the variance(s). The Finance Department and Department Head shall then work directly with the vendor to resolve any variances. Final payment shall not be made until the vendor is in compliance with the contract.
- U. **NON-DISCRIMINATION:** Bidder/Supplier and all sub-contractors shall, as a party to a public contract:
1. Refrain from unlawful discrimination in employment.
 2. By submission of the bid or proposal, the bidder/supplier certifies that he is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, title 42, U.S. Code Annotated and Executive Orders #11246 and #11375, which are incorporated herein by reference. The Equal Opportunity Clause, Section 6.1 of the Rules and Regulations of the Department of Human Rights of the State of Illinois, is a material part of any contract awarded on the basis of this bid or proposal.
 3. Bidder/supplier shall comply with standards set forth in the Title VII of Civil Rights Act of 1964, 42, U.S.C. s2000 et seq.; The Human Rights Act of the State of Illinois, 1968 Chapter 775 ILCS 5/1-101 et seq.; and The Americans with Disabilities Act.

- V. **CONTRACTOR CERTIFICATION:** Each contractor and subcontractor shall submit a Contractor Certification. Such certification shall be submitted prior to commencement of any work under the contract.
- W. **INSURANCE:** Evidence of Worker's Compensation and Liability Insurance in the minimum amounts as set forth in bid document is to be submitted prior to commencement of any work under the contract.

SECTION IV -- PROFESSIONAL SERVICE CONTRACTS

The purchase of professional services (e.g. auditors, architects, consultants, etc.) must be treated differently than the purchase of hard goods. In the purchase of hard goods, it is generally accepted that the lowest responsible bidder meeting specifications is awarded the bid. In purchasing services, there are no specifications as such, therefore, emphasis should be on accurately evaluating the capability of the firms that are interested in performing the services. The Request For Proposal/Qualifications (RFP/RFQ) method is the most appropriate in such cases. The RFP/Q should include the following:

1. A work statement or performance specification.
2. Time frames in which the work is to be completed.
3. Specific criteria to be used in evaluating the proposal. (These criteria can cover the offerer's proposed approach to accomplish the work, management capability and price.)

The RFP/Q should request the offerer to provide the following information.

1. An understanding of the problem or program; the work to be done; and, the approach to be used to achieve the objectives, including, detailing of tasks involved in the offerer's approach.
2. Facility and capability data, including related experiences and resumes of key personnel.
3. Time frame of milestone accomplishment (if not defined in the RFP/Q).
4. Pricing, including a flat fee or percent and any incidentals (e.g. mileage, per diem, etc.).

In evaluating proposals and recommending award, the following criteria should be used:

1. **GENERAL QUALITY AND RESPONSIVENESS OF OFFERER:**
 - a. Responsiveness to terms, conditions and time frames.
 - b. Completeness and thoroughness.
 - c. Grasp of the problem or of work to be performed, and of approach to be used.

2. ORGANIZATION AND PERSONNEL:

- a. Evidence of good organizational and management practices.
- b. Qualifications of personnel.
- c. Experience and past performance.

3. PRICE AND PROPOSAL PRICE BREAKDOWN OR PRICE RANGE AND COST SCHEDULE:

The two most important differences of RFP/Q's are:

- a. They are NOT bids, they are proposals and, as such, can be negotiated subsequent to opening.
- b. The submission of pricing information is NOT synonymous with competitive bidding, whereby price is the primary evaluating factor and the low responsible bid is accepted. Cost, in many instances, can become a secondary consideration.

SECTION V – GIFT BAN

Notwithstanding the prohibitions contained in the State Officials and Employee Ethics Act (5 ILCS 430/1-1 et seq.) and the prohibitions contained in Division 4 of Chapter 25 of this Code, no Town officer or employee shall accept or solicit any gift from a prohibited source if such gift exceeds 25 dollars in value unless such gift qualifies as a listed exception in 5 ILCS 430/10-15. (Added 5/3/04 by Ord. No. 4944)(Amended 11/6/06 by Ord. No. 5097).

An officer or employee does not violate this provision if the officer or employee promptly takes reasonable action to return the prohibited gift to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt for income taxation under Section 501(C)(3) of the Internal Revenue code of 1986 as now or hereafter amended, renumbered or succeeded. (Added 11/6/06 by Ord. No. 5097).

SECTION VI – ILLINOIS' PREFERENCE ACT - 30 ILCS 570/0.01 et seq.

This Act requires contractors on state funded public works projects to employ a workforce of at least 90% Illinois residents during periods of excessive unemployment. Excessive unemployment is defined as at least two consecutive months during which the Illinois unemployment rate exceeds 5%.

Reviewed March 2016