



Ordinance #2024-11 An Ordinance of the Fairfield Town Council of Fairfield Town, Utah, Amending Chapter 9 of Title 1 (Purchasing) And Adopting A Procurement Policy.

Date October 16, 2024

WHEREAS, Utah Code regulates procurement for State agencies and local governments; however, Utah Code § 63-6a-103(47) allows for municipalities to adopt “a procurement code by ordinance;” and

WHEREAS, The Town seeks to update its procurement code by removing the procurement process and procedures from the Town’s codified ordinances and adopt a procurement policy; and

WHEREAS, the Town Council finds that the subject text amendment will enhance public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE FAIRFIELD TOWN, UTAH:

SECTION 1. Text Amendment. Chapter 9 of Title 1 shall be amended as shown in **Exhibit A**.

SECTION 2. Adoption of Procurement Policy. The Town Council hereby adopts the procurement policy attached as **Exhibit B**.

SECTION 2. Severability. If any section, part, or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts, provisions, and words of this Ordinance shall be severable.

SECTION 3. Effective Date. This Ordinance shall become effective immediately upon publication or posting as required by law.

Passed and Adopted this 16 day of October, 2024.

FAIRFIELD TOWN

Hollie McKinney
Hollie McKinney

RL Panek yes - no - Absent

Tyler Thomas yes TT no -

Michael Weber yes - no - Absent

Richard Cameron yes RC no -

ATTEST: Stephanie Shelley
Stephanie Shelley, Town Recorder/Clerk

I, Stephanie Shelley, Town Recorder of Fairfield Town, Utah, do hereby certify and declare that the above and foregoing is a true, full, and correct copy of an ordinance passed by the Town Council of Fairfield Town, Utah, on the 16th day of October, 2024.



Exhibit A

Delete Chapter 9 of Title 1 in its entirety and replace with the following:

Section 1.9.10 Procurement

All procurement on behalf of the Town shall be conducted in accordance with rules and regulations adopted by the Town Council, as amended from time to time.

Exhibit B

PROCUREMENT POLICY FOR THE TOWN OF FAIRFIELD

Table of Contents

1. PURPOSE.....	2
2. DEFINITIONS.....	2
3. PROCUREMENT GUIDELINES.....	7
a. Monetary Limits.....	7
b. Duration of Bid.....	7
c. Competitive Sealed Bidding and Proposals.....	8
d. Bidding Guidelines.....	8
4. COMPETITIVE PURCHASING PROCESSES.....	12
a. Request for Information (RFI).....	12
b. Informal Quote.....	13
c. Request for Quote (RFQ).....	13
d. Invitation for Bid (IFB).....	14
e. Request for Proposal (RFP).....	15
f. Request for Statement of Qualifications (RFSQ).....	16
5. CONSTRUCTION PROJECTS.....	18
6. NON-COMPETITIVE PURCHASING PROCESSES.....	18
7. ADDITIONAL GUIDELINES.....	24
8. PROTESTS AND APPEALS.....	26

1. PURPOSE.

- a. This Policy establishes operational policies for the Town's purchasing process, which assure the community that goods and services required to support the operation of Town government are procured in a manner consistent with provisions of the Town's Code, State Code, Administrative Rules, and Federal laws where applicable.
- b. The Town is committed to fairness and equal opportunity with integrity and openness that results in the best value for the Town. The statements contained in this policy represent the basic intentions and goals of the Town. Nothing in this statement shall create rights or interests in third parties, impose obligations upon, or create causes of action against the Town, its officers, agents, or employees. Failure to follow the procedures set forth herein may be remedied by a Town Council determination, as defined in this policy, unless otherwise provided by law.

2. DEFINITIONS

Addendum or Amendment – Any written modification or revision to any bid document or contract document.

Bid – Unless otherwise specified, represents all forms of solicitation including, but not limited to, Request for Quote (RFQ), Invitation for Bid (IFB), Request for Proposal (RFP), and Request for Statement of Qualifications (RFSQ).

Competitive Sealed Bidding – A process in which vendors are invited to submit formal sealed bids to provide a designated product or to complete a designated project in accordance with specifications provided by the Town.

Commodity – Goods or services.

Contract – All types of Town agreements, regardless of what they may be called, for the purchase or disposal of real or personal property, goods, or services.

Cooperative Procurements – The combining of requirements for two or more purchasing units outside the Town, in order to obtain the benefits of volume purchases and/or reduction in administrative efforts and costs.

Emergency Purchase – A purchase that must be made quickly that would not be practical to go through the procurement process. Failure to anticipate a need or situation created by improper planning or negligence is not to be considered an emergency.

Declared Emergency – Emergency or disaster situation where the need for response exceeds all capabilities. A condition that requires emergency assistance to save lives and/or to protect property, public health and safety, and to reduce the threat and effects of a disaster. A Declaration of Emergency is necessary to access specified extraordinary powers considered necessary to prevent, respond to, or alleviate the effects of the emergency or disaster.

Designated Councilmember - The person designated by the Town Council to ensure compliance with the purchasing policy.

Good – A tangible product that is not money or real estate. The term “Good” shall be interchangeable with the terms “supply,” “merchandise,” “product,” “material,” “item,” “personal property,” etc., for the purpose of this policy.

Immaterial Error – An irregularity or abnormality that is a matter of form that does not affect substance, or an inconsequential variation from a requirement of a solicitation that has no, little, or trivial effect on the procurement process and that is not prejudicial to other vendors.

Informal Quote – A process in which requests for a quote are sent directly to vendors to obtain pricing from any authorized buyer for the Town.

Insufficient Response

1. Where one (1) less response is received to any Invitation for Bid (IFB), Request for Proposal (RFP), or Request for Statement of Qualifications (RFSQ), or
2. Where two (2) or fewer quotes are received in response to an RFQ.

Intent to Negotiate – Component of a competitive bidding process involving negotiating terms and conditions with multiple potential vendors before contract award.

Invitation for Bid (IFB) – A solicitation process where bids are solicited from potential vendors. The term “Invitation for Bid” shall be interchangeable with the term “Request for Bid” for the purpose of this policy. IFBs shall be generally used for construction projects.

Noncompetitive Purchase – The purchase of a good or service directly from a supplier without a competitive process.

Professional Services – Means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including but not limited to labor, effort, or work in the field of:

- Accounting
- Architecture
- Artistic endeavors
- Construction design and management
- Engineering
- Financial services
- Information technology
- Insurance
- Law
- Lobbying
- Medicine
- Mental health services
- General Plan Planning
- Underwriting
- Software

Project Manager (PM) – The person designated by the Town, who is in charge of managing a specific purchase or project.

Protestor – One who has standing to file a protest to challenge the award or proposed award of a contract for the procurement of goods and services.

Purchasing – The process of buying, procuring, renting, leasing, or otherwise acquiring any commodity. The term “purchasing” shall be interchangeable with the term “procurement” for the purpose of this policy. It also includes all functions that pertain to the obtaining of any commodity, including:

1. Description of requirements;
2. Selection and solicitation of bids, proposals, qualifications, or quotes;
3. Preparation and award of contract; and
4. All phases of contract administration

Purchasing Officer – The Town Administrator or designee. The purchasing officer shall oversee the Town’s purchasing functions and ensure purchases align with this policy.

Purchasing Tools – The Town’s preferred methods of advertising and hosting solicitations.

Related Party – Any party, whether an individual, corporation, partnership, association, limited liability company, or any other form of business association or entity whatsoever related to any vendor by blood, marriage, ownership, or contract within the first degree of consanguinity, through which the party has a relationship of ownership, or other interest with the vendor, so that the party will actually, or by effect, receive or control a portion of the benefit or profit.

Request for Information (RFI) – A solicitation process where written information, comments, or suggestions are requested from potential vendors. An RFI is not a bid process resulting in a purchase or contract.

Request for Proposal (RFP) – A solicitation process where proposals are solicited from potential vendors.

Request for Quote (RFQ) – A solicitation process where signed quotes are obtained from potential vendors. RFQs shall generally be used when purchasing goods.

Request for Statement of Qualifications (RFSQ) – A solicitation process where qualifications are solicited from potential vendors.

Responsible Bidder – A vendor who has the capability in all respects to fully perform the agreement requirements and is determined to have the experience, integrity, reliability, capacity, facilities, equipment, and credit that will assure good faith performance. The term “Responsible Bidder” shall be interchangeable with the term “Responsible Vendor” for the purposes of this policy.

Responsive Bidder – A vendor who has submitted a bid that conforms in all material respects, including exceptions, to the requirements set forth in the RFQ, IFB, RFP, or RFSQ.

Sole Source Procurement – A situation where a service, product, or requirement is available only from a single vendor. Examples of circumstances that may necessitate sole source purchase include:

1. The Town needs a supply or service of a unique or specialized nature, and only one known vendor is available to meet the need.

2. Specific parts, accessories, equipment, materials, services, proprietary commodities, or other commodities are necessary to meet the Town's needs, and there are no comparable commodities available.

Service – Any effort, labor, or work performed that is beneficial to the Town. It includes Professional Services but does not include labor, effort, or work provided under an employment agreement.

Specification – Any description of the physical or functional characteristics or nature of a commodity. It may include, but is not limited to, a description of any requirement for inspecting, testing, or preparing a commodity for delivery.

Standing – To have suffered an injury or harm or to be about to suffer imminent injury or harm if:

1. The cause of injury or harm is:
 - a. An infringement of the protestor's own right and not the right of another person who is not a party to the purchase; and
 - b. Reasonably connected to the Town's conduct; and
 - c. The sole reason the protestor is not considered, or is no longer considered, for an award of a contract for the purchase that is the subject of the protest; and
2. The protestor has the legal authority to file the protest on behalf of the actual or prospective bidder or prospective contractor involved in the procurement that is the subject of the protest.

Substantial Savings – Savings of considerable size or amount of value and/or time.

Vendor – Any person or entity who does business with the Town or is seeking to enter into a contract with the Town, other than as an employee or volunteer, whether by purchasing, selling, constructing, or providing services or commodities. This includes a bidder, offeror, or approved vendor. The term "Vendor" shall be interchangeable with the terms "Bidder," "Provider," "Contractor," "Consultant," etc., for the purpose of this policy.

3. PROCUREMENT GUIDELINES

a. Monetary Limits

- i. This policy establishes the following monetary limits and methods of competitive purchasing. Except as otherwise allowed in this policy, the Town shall conform to the following limits:
 1. *Small Purchases.* Purchases between \$0 and \$4,999.99 may be made with the Purchasing Officer's approval, with or without competitive sealed bids, proposals, or quotes. The Purchasing Officer shall take reasonable steps to ensure fair pricing.
 2. *Large Purchases.*
 - a. Purchases between \$5,000.00 and \$49,999.99 – Shall be made only after:
 - i. Soliciting at least three (3) RFQs;
 - ii. Completing the competitive sealed bidding process, or
 - iii. Completing a non-competitive purchasing process as allowed under this policy.
 - b. The Purchasing Officer, in consultation with the Designated Councilmember, may award a contract for a large purchase previously budgeted by the Town Council without the approval of the Town Council. The Purchasing Officer shall seek approval from the Town Council prior to a large purchase not budgeted or prior approved by the Town Council.
 3. *Capital Purchases.* Purchases exceeding \$50,000.00 shall be made only after completing a competitive sealed bidding process unless they are non-competitive purchases.
- ii. Subdividing contracts, purchases, or professional services for the purpose of evading the requirements for RFQs or competitive sealed bidding is prohibited.
- iii. Recurring purchases that exceed a cumulative \$50,000.00 in a twelve (12) month fiscal period shall be made only after completing the competitive RFQ process or sealed bidding process.

b. Duration of Bid

- i. The bid period for IFBs, RFPs, and RFSQs shall be no less than five (5) business days, unless otherwise required by State or Federal law. Bid periods should take into account the overall size and complexity of the project, the project schedule, and the current bidding climate.
- ii. The question and answer period shall not close less than one business day prior to the bidding deadline.
- iii. If an addendum is released, the bid shall not close within 48 hours or two business days. An extension of the bidding deadline may be required.

c. Competitive Sealed Bidding and Proposals

- i. Any purchase may go through the competitive sealed bidding method, but purchases of \$50,000.00 or more are required to go through the competitive sealed bidding process unless they are non-competitive purchases.
- ii. Bids and proposals shall be received in a sealed manner and not opened until the time established in the formal solicitation. This may be done electronically if the Town's preferred purchasing tool allows.

d. Bidding Guidelines

- i. The following additional bidding guidelines apply to all RFQs, IFBs, RFPs, and RFSQs released by the Town:
 - 1. *Receipt of Bids* – Bid proposals and quotations shall not be accepted or received after the time set in the bid documents.
 - 2. *Withdrawal of Bids* – Bids or proposals may be revised, modified, or withdrawn by the potential vendor at any time prior to opening. Any such revision, modification, or withdrawal shall be in writing to the Purchasing Officer. After the bids are opened, they shall be irrevocable for the period specified in the bid documents. Correction or withdrawal of erroneous bids after opening, or cancellation of awards or contracts based on such bid mistakes, shall not be permitted except as authorized elsewhere in this policy or as stated in the bid documents.
 - 3. *Relief due to Computation Error* – Any potential vendor who seeks to withdraw or modify a bid because of a computational error shall notify

the Purchasing Officer no later than 24 hours following the bid closing, unless specified otherwise in the bid documents. The potential vendor shall provide worksheets and other information as appropriate or required by the Town to substantiate the claim of error. Failure to do so may bar such relief. The decision(s) to permit corrections or withdrawals of bids after the bid has been opened will be made by the Purchasing Officer, upon consultation with the Town Attorney.

4. *Immaterial Errors* – The Purchasing Officer, in consultation with the Town Attorney, may allow a vendor to correct an immaterial error in response to a solicitation process but may not allow a vendor to do any of the following after the bid has closed:
 - a. Correct any deficiency, inaccuracy, or mistake in a solicitation response that is not an immaterial error;
 - b. Correct incomplete submission of documents required in the solicitation;
 - c. Correct a failure to submit a timely solicitation response;
 - d. Substitute or alter a required form or other document specified in the solicitation;
 - e. Remedy a cause for a vendor being considered to be not responsible or a solicitation response not responsive; or
 - f. Correct a defect or inadequacy resulting in a determination that a vendor's solicitation response does not meet the mandatory minimum requirements of evaluation criteria.

Immaterial errors may be corrected by a vendor if responses are received within the timeline specified by the Purchasing Officer. Written documentation supporting the reason for allowing the correction will be placed in the purchasing file.

5. *Tie Bids/Proposals/Quotes* – In the event two or more bids, proposals, or quotes are equal in evaluation criteria and price, and are submitted by responsive and responsible vendors, the Purchasing Officer, after consultation with the Project Manager and the Purchasing Officer, may negotiate with the bidders and obtain the best bid possible.

6. *Clarifying Information* – After a bid has closed, the Purchasing Officer may, at any time, make a written or verbal request to a vendor to clarify information contained in a responsive solicitation response. Vendors shall respond in writing or verbally within the time frame established by the Purchasing Officer. A vendor's response to a request for clarification under this policy:
 - a. May only explain, illustrate, or interpret the contents of the vendor's original solicitation response;
 - b. May not be used to address criteria or specifications not contained in the vendor's original solicitations response; and
 - c. May not be used to correct a deficiency, inaccuracy, or mistake in a solicitation's response that is not an immaterial error as identified elsewhere in this policy.
 - d. Any information requested and received must be made part of the purchasing file.
7. *Non-Disclosure and Conflict of Interest Requirement* – All participants involved in the selection and awarding process of any RFP or RFSQ must sign a Non-Disclosure and Conflict of Interest Agreement specific to the RFP or RFSQ. This form is in addition to any general non-disclosure agreements and conflict of interest disclosures required by the Town.
8. *Non-Responsive Bids* – The Purchasing Officer, in consultation with the Town Attorney, may reject any bid or proposal which is materially non-responsive to the requirements set forth in the bid documents. The rejection reason shall be made part of the purchasing file.
9. *Cancellation and Rejection of Bids* – An RFQ, IFB, RFP, or RFSQ may be canceled at any time or may be rejected in whole or in part as specified in the solicitation if it is in the best interest of the Town. Any cancellations or rejections can be made at the reasonable discretion of the Purchasing Officer responsible for the purchase, upon consultation with the Town Attorney. The cancellation reason shall be made part of the purchasing file. Any RFQ, IFB, RFP, or RFSQ may be canceled prior to the award at the Town's discretion. If the Town decides after cancellation to re-solicit a bid, the re-solicitation shall not be made for the purpose of directing the award to a particular vendor.

10. *Right to Disqualify* – The Town reserves the right to disqualify any vendor or subcontractor as stated in this policy. The Town also reserves the right to review and consider all subcontractors individually when hired by a general contractor and consider their qualifications as outlined in this policy. The Town reserves the right to deny any bids with or without cause. All disqualifications will be approved by the Purchasing Officer, upon consultation with the Town Attorney.
11. *Determination of a Non-Responsible Vendor* – Written determination of a non-responsible vendor shall be made in accordance with this section. The unreasonable failure of a vendor 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 the vendor's bid or offer. After reasonable notice to the person(s) involved, the Purchasing Officer or Project Manager, in consultation with the Town Attorney, Purchasing Officer may disqualify a vendor from consideration for the award of a contract. The determination of non-responsibility shall be made in writing to the Purchasing Officer and will be made part of the purchasing file.
12. *Confidential Information* – If a contractor or vendor believes any information in a proposal or bid should be held confidential for business reasons, the contractor or vendor must submit a written claim of business confidentiality for that particular information with the reasons supporting the claim. Otherwise, all information submitted in a proposal becomes public information and may be requested in accordance with the Government Records Access and Management Act (GRAMA).
13. *Ineligibility* – In addition to all other remedies permitted by law, the Purchasing Officer, in consultation with the Town Attorney, may declare a potential vendor ineligible to bid on Town purchases and public service contracts for a period not to exceed three (3) years in circumstances identified in this Section. In such circumstances, the Purchasing Officer must submit written support for the determination of ineligibility. The Town shall take all reasonable steps to declare a potential vendor ineligible before a bid/proposal is submitted but may declare a potential vendor ineligible after a bid has been submitted. A potential vendor may be declared ineligible for any of the following grounds:
 - a. Two or more claims of computational errors in bid submissions within a two (2) year period;

- b. An unjustified refusal to provide or execute contract documents;
- c. Unsatisfactory performance of a contract;
- d. Unjustified refusal to perform or complete contract work or warranty performance;
- e. Unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract;
- f. Conviction under state or federal statutes for fraud or bribery;
- g. Theft, falsification, or destruction of records;
- h. Receiving stolen property or any other similar crimes;
- i. Offense indicating a lack of business integrity which would directly affect the reliability and credibility of the performance of such a vendor with future contracts with the Town;
- j. Not a responsible bidder or vendor

4. COMPETITIVE PURCHASING PROCESSES

a. Request for Information (RFI)

- i. An RFI is a solicitation method used to obtain information, comments, or suggestions from potential bidders or vendors before issuing an Invitation for Bid (IFB), Request for Proposal (RFP), or Request for Statement of Qualifications (RFSQ). An RFI can be useful to prepare to issue an IFB, RFP, or RFSQ for an unfamiliar or complex purchase or in other instances identified in this section. Each RFI will be released through the Town's preferred purchasing tool for any specified period determined reasonable to gather the requested information.
- ii. An RFI is NOT a purchasing process and may not be used to:
 - 1. Solicit cost, pricing, or rate information;
 - 2. Negotiate fees;
 - 3. Make a purchase; or
 - 4. Enter into a contract.

- iii. A response to an RFI is not an offer and may not be accepted to form a binding contract.
- iv. An RFI may seek a wide range of information including, but not limited, to:
 - 1. Availability of a purchasing commodity;
 - 2. Delivery schedules;
 - 3. Industry standards and practices;
 - 4. Product specifications;
 - 5. Training;
 - 6. New technologies;
 - 7. Capabilities of potential vendors of a purchasing commodity; and
 - 8. Alternative solutions
- v. The Town may use the information obtained through the RFI process in other bid processes required by this policy. The information may not be used as an alternative to following this policy.

b. Informal Quote

- i. Any purchase between \$0 and \$4,999.99 may be made utilizing the Informal Quote process. Informal Quotes are not required but encouraged to ensure competitive pricing is received by the Town. Requests for Informal Quotes should be sent to three vendors via phone call, email, fax, or any other method to obtain pricing by an authorized buyer for the Town. Documentation is not required by the Purchasing Officer (unless a purchase order is requested), but the Purchasing Officer should keep records as needed to support the purchase.

c. Request for Quote (RFQ)

- i. Any purchase between \$5,000.00 and \$49,999.99 shall be made utilizing this RFQ process, other competitive bidding option, or non-competitive process as allowed under this policy. An RFQ must comply with the following policies and procedures:
 - 1. An RFQ must be sent to a minimum of three (3) vendors with the request that the vendor send a written quote with pricing by the timeframe identified in the solicitation.
 - 2. A minimum of two (2) quotes are required to be received by the established timeframe or the purchase must go through a competitive

sealed bidding process, or other process allowed for elsewhere in this policy. A vendor declining to submit a quote qualifies as a received quote.

3. A public notice for an RFQ is not required.
4. Selection and awarding will be based on the vendor with the lowest cost, who is responsive to requirements in the RFQ documents without material exception, and who is responsible and capable of providing the commodities or services to be purchased.
5. All documentation for Requests for Quotes must be recorded and filed by the Purchasing Officer prior to awarding the quote.
6. The received quote(s) shall be signed by an individual who has the authority to bind the company (vendor) to pricing submitted.
7. Quote documentation will be attached to the Purchase Order or Contract.

d. Invitation for Bid (IFB)

- i. Invitation for Bid (IFB) may be used when the lowest price is the primary factor for awarding a bid. Each IFB shall be commenced by the Purchasing Officer and must include specifications and all contractual terms and conditions applicable to the purchase. An IFB shall be submitted through the Town's preferred purchasing tool. At least two responses are required. A vendor declining to submit a quote qualifies as a received quote.
- ii. Specifications should seek to promote the overall economy and best use for the purposes intended, encourage competition, and should not be unduly restrictive.
- iii. Evaluation Process is limited to cost, determination of responsiveness, and compliance with the specifications and conditions specified in the bid documents, and the responsibility of the potential vendor.
 1. Negotiations are not permitted.
 2. This method does not permit comparison of the relative specifications of competing potential vendors, but only comparison to the specifications contained in the bid documents, unless explicitly stated in the IFB.
- iv. Awards shall be made to the potential vendor offering the lowest cost who is responsive to the requirements of the bid documents, without material

exception, and who is responsible and capable of providing the commodity or commodities to be purchased.

e. Request for Proposal (RFP)

- i. A Request for Proposal can be used whenever detailed specifications cannot be determined, whenever several possible methods may satisfy the Town's requirements, or whenever the nature of the requirements is such that subjective evaluation of criteria other than cost is necessary. An RFP shall be submitted through the Town's preferred purchasing tool.
- ii. Specifications – This method can be utilized when definite specifications cannot be determined in advance, when a scope of work is required which makes comparison of competing proposals relative to each other appropriate, or when it is in the best interest of the Town to have a vendor design a public improvement. Specifications shall seek to promote the overall economy and best use for the purposes intended, encourage competition, and shall not be unduly restrictive.
- iii. Two-step awards – When it is considered impractical to prepare initially a purchase description to support an award based on price, an RFP may be issued requesting the submission of unpriced offers to be followed by an Intent to Negotiate price and key contract terms.
- iv. Objective and subjective criteria may be used in the evaluation of competing proposals. Within the RFP it shall state the relative importance of cost and other evaluation factors (experience, qualifications, references, etc.), including the quantitative basis (weight of each factor) for evaluation.
- v. Evaluation Process – Determination of responsiveness and compliance with specifications and conditions specified in the bid documents and of the responsibility of the potential vendor.
 1. All RFP evaluations/awards shall be made by a selection committee comprising no less than three (3) members selected by the Project Manager.
 2. No criteria may be used in an RFP evaluation that was not set forth in the RFP.
 3. Discussions are permitted with responsive and responsible vendors who submitted proposals determined to have a reasonable chance of being

selected, in order to clarify and assure full understanding of and conformance to the solicitation requirements.

4. Revisions and modifications are permitted at the request of the Town with responsive and responsible vendors who submitted proposals.
 5. Information taken from proposals received may be disclosed consistent with Town policy and applicable laws.
- vi. Awards shall be made to the highest-scoring responsive and responsible vendor based on the criteria established in the RFP documents.
1. A recommendation memo and all documentation must be sent to the Purchasing Officer prior to the award and placed in the purchasing file.

f. Request for Statement of Qualifications (RFSQ)

- i. A Request for Statement of Qualifications is used when deemed appropriate by the Town. Potential vendors must be pre-qualified for particular types of supplies, services, and construction. An RFSQ shall be submitted through the Town's preferred purchasing tool. Qualified vendors will receive notice and opportunity to submit competitive pricing to the Town when the Town requires the goods or services the vendor is qualified for. Non-qualified vendors will not be considered.
- ii. Specifications:
 1. RFSQs shall not include any items regarding cost, pricing, or hourly rates.
 2. RFSQs shall include the following:
 - a. Factors related to the particular types of supplies, services, and construction deemed necessary;
 - b. Time frame of the pre-qualification, specific expiration date of the pre-qualification, and any options for renewal;
 - c. Specific requirements or qualifications that a potential vendor must possess to be considered qualified;
 - d. Any limitation to the number of potential vendors the Town may pre-qualify; and

- e. Information regarding the selection process.
- iii. Evaluation Process – Determination of responsiveness and compliance with the specifications and conditions specified in the bid documents, and of the responsibility of the potential vendor.
 - 1. All evaluations/awards will be made by a selection committee of no less than three (3) individuals selected by the Project Manager.
 - 2. No qualification or criteria may be used in the evaluation process that is not identified in the RFSQ.
- iv. Selection – The selection process will be based on a vendor's responsiveness to the qualifications set forth in the RFSQ. Vendors will be determined to be qualified vendors or will be placed on an approved vendor list as specified in the RFSQ.
 - 1. A recommendation memo from the selection committee and all documentation must be sent to the Purchasing Officer prior to award and placed in the purchasing file.
- v. Selection Process
 - 1. RFSQs may be followed by an IFB or RFP released to qualified vendors through the Town's preferred purchasing tool unless otherwise stated below.
 - 2. Approved vendor lists: If explicitly stated in the RFSQ the Town may decide to establish a fair and equitable system that allows for equal opportunity among qualified vendors if in the best interest of the Town. Examples include but are not limited to:
 - a. RFQs;
 - b. A random selection, or as otherwise designed and designated in the RFSQ;
 - c. A random selection from the pool of pre-qualified contractors for emergency purchases.
 - 3. An RFSQ and selection of qualified vendors does not constitute an exclusive agreement that would prevent the Town from submitting an IFB or RFP to any and all potential vendors if in the Town's best interest.

4. Except as noted above, all other bid guidelines and processes set forth in the policy apply to the prequalification process.
5. Vendors shall either be continually allowed to qualify for an approved vendor list or a new RFSQ will occur at least every 36 months.

5. CONSTRUCTION PROJECTS

- a. Contracts and noticing for Town construction projects shall comply with this chapter as well as any applicable Federal and State law, including Utah Code §§ 10-7-20.5, 10-7-86, 11-39-103, and 14-1-18 through 20.
- b. The Town may utilize as many alternative methods of construction contracting and management as the Town determines to be in its best interest, including, but not limited to, Design-Bid-Build, Design-Build (DB), Construction Manager-General Contractor (CMGC), Best Value Contracting, *etc.*

6. NON-COMPETITIVE PURCHASING PROCESSES

The competitive purchasing requirements of this policy need not be followed in the following circumstances:

- a. **Federal or State Funds** – In cases where federal or state funds/grants are being used and federal or state purchasing laws or procedures govern the types of goods or services being procured, the Town shall follow the applicable federal or state purchasing law or procedures in lieu of the procedures set forth in this policy.
 - i. The federal or state fund/grant documentation and proof of compliance (quotations, ads, language, Davis-Bacon, minority- or women-owned businesses, etc.) must be included with the requisition or contract.
- b. **State Contract** – The Purchasing Officer may procure without competitive bids any supplies or services which are the subject of contracts with the State of Utah, as set forth in Utah Statute.
 - i. The State contract number and information for the purchase shall be included in the requisition and sent to the Purchasing Officer prior to the purchase.

- ii. The Purchasing Officer must make sure that the purchase complies with all aspects and terms stated in the State contract, as failing to follow the instructions will void the use of the State contract.
- iii. In the event that a State contracted vendor is unable to fulfill the contract in a reasonable time frame, the Purchasing Officer may purchase from another potential vendor willing to honor all aspects of the State contract. All of the following provisions must be followed before the Town can purchase using a State contract:
 - 1. Written documentation must be obtained and sent to the Town Purchasing Officer from the State Purchasing Officer (or designee) over the contract confirming the delay and any suggestions made for purchasing through the existing contract or another existing contract;
 - 2. Written documentation must be obtained and sent to the Town Purchasing Officer from the potential vendor willing to honor and accept all conditions of the state contract signed by an individual authorized to bind the company to the agreement;
- iv. If a vendor offers a commodity at a price less than a vendor with a state contract, the purchase can be made without going through the competitive bidding process. The Project Manager shall provide the Purchasing Officer with a copy of the state contracted price along with the invoice from the vendor offering a lower price.
- v. The Purchasing Officer purchasing under a State contract will also provide a memo and documentation detailing the event and why the purchase is needed to the Purchasing Officer.
- c. **Utah Intergovernmental Contracts** – The Purchasing Officer may procure, without competitive bids or proposals, supplies, and services which are the subject of vendor contracts with other government agencies located in the state of Utah. The valid contract between the vendor and the government agency must contain a clause that specifically allows use by other government agencies.
 - i. The Purchasing Officer shall submit a copy of the bid documents and contract from the local agency to the Purchasing Officer, along with a memo and documentation supporting why normal competitive bidding requirements should be bypassed.

- ii. The bid document, contract, memo, and other relevant documentation must be attached to the requisition.
- d. **Utah Intergovernmental Agency** – The Purchasing Officer may procure goods and services without competitive bids, when goods and services may be provided directly by other governmental agencies located in the state of Utah.
- e. **Purchasing Cooperatives** – The Town may join with federal, state, or local governments, or with special districts, school districts, and other such similar agencies in purchasing goods and services as a cooperative as long as the cooperative meets or exceeds Town purchasing policy.
 - i. Entering into a purchasing cooperative must be pre-approved by the Town Council.
 - ii. All purchases must be approved by the Purchasing Officer.
 - iii. A copy of the cooperative contract shall be submitted with the other documentation to the Purchasing Officer.
- f. **Professional Services** – Contracts for professional services reasonably expected to cost less than \$50,000.00 per project may be awarded at the discretion of the Town Council.
- g. **Insufficient Response** – In an instance where there are insufficient responses to an IFB, RFP, or RFSQ, the Purchasing Officer may elect to re-release the IFB, RFP, or RFSQ or bypass the competitive bidding process. If the Purchasing Officer elects to bypass the competitive bidding process set out in this policy, written documentation shall be provided to the Town Council.
- h. **Engineering and Architectural** – Contracts for architectural and engineering services shall be made by selecting the most highly qualified provider of those services based on demonstrated competence and qualifications. The Purchasing Officer shall document and outline the reasoning for selecting the service provider.
- i. **Emergency** - Notwithstanding other provisions of this policy, purchases may be made in emergencies by the Purchasing Officer in instances where the purchase could not reasonably have been made pursuant to this policy, provided that purchases shall be made with as much competition as practical under the circumstance.

- i. Within two (2) business days after the purchase, the Purchasing Officer shall provide a signed written statement to the Town Council setting out in reasonable detail the purchase, price, cause, and basis for the emergency. The Town Council will review the statement for compliance.
- ii. A copy of the statement shall be included in the purchasing file.
- iii. Failure to anticipate a need or situation(s) created by improper planning or negligence is not to be considered an emergency unless such failure creates an imminent risk to public health and/or safety.
- j. **Declared Emergency** – Under a declared local “state of emergency,” the Town Council spend money for the acquisition of goods and services, as long as deemed necessary and in the best interest of the Town, to provide emergency-related response initiatives and activities. The initial term of any contract resulting from an emergency procurement may be for no longer than thirty (30) days.
- k. **Sole Source** – In the event a Purchasing Officer determines commodities or services meet the definition of a sole source procurement listed in this policy, the Purchasing Officer shall submit written notification to the Town Recorder with documentation supporting the determination. This documentation shall include all research and steps taken to verify that the purchase meets the definition of sole source procurement.
 - i. To establish sole source, the Purchasing Officer may take the following steps:
 - 1. A notice containing the purchase may be posted for at least three business days using the Town’s preferred purchasing tools stating that the Town intends to award a contract without competition. The notice invites any companies who believe they can provide the goods and services to contact the Purchasing Officer within the specified time frame stated in the notice.
 - 2. If there are no companies that respond to the notice within the given time frame, the purchase may be deemed as a sole source.
 - 3. If a company can demonstrate they can provide the goods or services, the Town will then follow the competitive bidding guidelines established in this policy.
 - 4. Alternatively, the Purchasing Officer may provide a signed statement from the company proposing to provide the goods and services that they

are the sole source for that good or service. The statement must be signed by an authorized representative of the company.

- l. **Superior or More Suitable Products** – If a Purchasing Officer determines a product significantly surpasses similar competing products in terms of quality, serviceability, or longevity, or that such product is better suited to the needs of the Town to lower costs of inventory or to maintain compatibility with existing Town-owned equipment, the Town Manager may grant an exception based on the criteria described above.
- m. **Town Council Determinations** – The Town Council may, by Resolution, authorize any purchase without complying with the provisions of this policy.
 - i. Documentation of the Town Council’s decision shall be placed in the purchasing file and must be attached to the requisition or contract.
- n. **Special Opportunity** – Where substantial and quantifiable savings will be realized in the purchase of commodities, or non-professional or professional services, a Purchasing Officer may bypass competitive bidding or the RFQ requirements set out in this policy by following the procedures outlined below, provided other applicable provisions of this section are met before the purchase is made. Coupons, promotional codes, or discount programs cannot be used to recognize substantial savings.
 - i. The Purchasing Officer shall, in his or her reasonable discretion, obtain offers from competing services in a manner most likely to meet the purpose of this section; and
 - ii. The Purchasing Officer shall disclose the proposed purchase in a signed written memorandum to the Town Council setting out in reasonable detail the reason the purchase is recommended, the reason normal purchasing procedures are not recommended, the efforts made to obtain competitive offers, and the proposed savings; and
 - iii. A copy of the signed memorandum shall be made part of the purchasing file.
- o. **Compatibility, Parts, Training** – A Purchasing Officer may procure without competitive bids equipment and supplies which, by reason of the training of Town personnel who service such equipment, or which is an addition to or for the repair or maintenance of equipment owned by the Town which may be more efficiently added to, repaired, or maintained by a certain brand, person, or firm.

In such cases the Purchasing Officer shall submit written documentation to the Purchasing Officer.

- p. **Utility Services and Impact Fees** – A department may procure without competitive bids the usage of any utility or the work by utility companies to install their services, such as water, electricity, gas, sewer, cable, telephone, and broadband, except when alternative supplies or services are available. Impact fees are also exempt from the bidding process.
- q. **Miscellaneous** – Procurements that, by their nature, are not adapted to award by the competitive bid process may be procured without competitive bid, as identified below in this section. In such cases, the Purchasing Officer shall submit written documentation to the Town Council. Listed below are specific qualified purchases that are allowed because competitive processes are impractical and not in the best interest of the Town:
 - i. Legal services or lobbying, including, but not limited to, legal counsel, expert witnesses, hearing officers, special counsel, *etc.*;
 - ii. Insurance;
 - iii. The publication of legal notices, ordinances, resolutions, and other legal advertising;
 - iv. Water or irrigation shares;
 - v. The private placement of bonds, tax anticipation notes, or other instruments of indebtedness, including credit ratings. Financial advisors are excluded from this exception;
 - vi. The purchase of non-software subscriptions, magazines, books, trade journals, reference works, periodicals, examination or testing materials, and similar articles of an educational, informational, or instructional nature that are relevant to the duties of Town employees;
 - vii. Goods, materials, supplies, and services utilized by the Town Recorder or the Town for purposes of performing duties in regard to elections;
 - viii. Goods and services purchased for authorized resale;

- ix. Memberships, certifications, trainings, or any costs associated with accreditations required or relevant to the duties of Town employees which are in the best interest of the Town;
- x. Drug testing, employee physicals, and fitness-for-duty evaluations;
- xi. Realtors, acquisition agents, appraisers, or title work for Town purposes;
- xii. Musical performers, promoters, agents, entertainers, staging, lighting, and sound services, and license holders for Town events;
- xiii. Acquisition of art and artistic services, including but not limited to paintings, sculptures, photographs, photography services, floats, video productions, and artistic performances. For purposes of this policy, architectural services are not classified as art;
- xiv. Advertising in various forms, including social media platforms, radio, billboards, print media, digital media, job boards, media websites, recruitment agencies, etc.;
- xv. Security – Security services meant to protect town infrastructure and data/information;
- xvi. Purchase of specialized animals.

7. ADDITIONAL GUIDELINES

- a. **Construction Project Awards** – In the event that the lowest responsive and responsible bid for a construction project exceeds available funds, and the bid does not exceed such funds by more than ten percent (10%), the Purchasing Officer is authorized in situations where time or economic considerations preclude solicitation of work of a reduced scope, to permit the negotiation and adjustment of the bid price, and changes in the bid requirements, with the lowest responsive and responsible bidder in order to bring the bid within the amount of available funds.
- b. **Performance and Bid Bonds** – Performance and bid bonds may be required to protect the best interests of the Town. The nature, form, and amount of such bonds shall be determined by the Project Manager, along with the Purchasing Officer, and shall be described in the IFB, RFP, or RFSQ.

- c. **Vendor Performance/Evaluation** – The Project Manager shall document unsatisfactory performance by the vendor with a post project evaluation and send a copy of the documentation to the Purchasing Officer to be filed with the vendor records.
- d. **Payment** – Vendors that performed work for the Town must submit an invoice to the Town upon completion, unless prepayment options have been agreed upon by contract.
- e. **Disclosure of Information** – Unauthorized disclosure of information pertaining to any bid, purchase, contract, or any other agreement is prohibited except as allowed under the Utah Governmental Records Access Management Act (GRAMA). Such disclosures by public officers or employees shall be considered cause for disciplinary action consistent with the Town’s policies and procedures and may result in corrective remedies as indicated in the Remedies section of this policy.
- f. **Period of Time Contracts** – Unless otherwise provided by law, a contract for supplies or services that through any combination of renewals exceeds five (5) years, will need to be approved by the Town Council based on the best interests of the Town; provided that the term of the contract and conditions of renewal or expansion, if any, are included in the solicitation, and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. This does not apply to the design or construction of a facility, road, or public transportation project or to the financing of equipment. Purchases of software and financial services by the Town are exempted from the five year contract limitation due to significant investment of time and resources required for these purchases.
- g. **Extension of Contracts** – The Purchasing Officer may extend an existing contract without engaging in a standard procurement process for a period of time not to exceed 120 days if:
 - i. An extension of the contract is necessary to:
 - 1. Avoid a lapse in a critical government service; or
 - 2. To mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property; and

- ii. The Town is engaged in a standard procurement process for a procurement item that is the subject of the contract being extended; and
- iii. The standard procurement process is delayed due to an unintentional error.
- h. **Records** – Procurement records shall be maintained in accordance with the Town's Retention Schedule. All contracts and required documents must be submitted to the Town Recorder prior to the execution of the contract.
- i. **Collusion** – Any agreement or collusion among potential vendors is deemed to be contrary to the best interest of the Town. Any agreement to bid a fixed price or other similar actions among prospective vendors shall render the response of such vendors void.
- j. **Kickbacks and Gratuities** – Individuals, or family members of an individual, are prohibited from seeking or receiving gratuities or kickbacks as compensation for preferential treatment as defined in Town policy, Town code, and State code (63G-6a-2404, 67-16-5 through 67-16-6).
- k. **Personal Purchases** – Procurement of goods and services ordered on Town credit or paid for by the Town which is for the personal use of an official or employee of the Town shall not be delivered, or if delivered, shall be void or voidable at the Town's option. Such personal procurements shall not be permitted and shall be considered cause for disciplinary action. Due to the tax-exempt status of the Town, Town officers and employees may not purchase goods or services for personal use from suppliers on a Town account.
- l. **Participation by Bidder Who Supplies Specifications** – A person other than a Town employee who has prepared specifications used substantially by the Town in determining from which bidder or proponent it wishes to purchase goods or services may participate in a bid or proposal procurement where the Purchasing Officer determines that such participation will be in the best interest of the Town.

8. PROTESTS AND APPEALS

- a. **Written Protest** – Any person who has standing and is aggrieved in connection with a purchase or an award of a contract may protest the purchase by filing a written statement with the Town Recorder, which will be forwarded to the Purchasing Officer.

- i. Filing a Written Statement – The written statement shall contain the following information:
 - 1. The protesting party's name, mailing address or e-mail address, daytime telephone number, the signature of the protesting party or the attorney for the protesting party, and the date of the protest is signed; and
 - 2. A concise statement of the facts and evidence:
 - a. Leading the protestor to claim that the protestor has been aggrieved in connection with a purchase and providing grounds for the protestor's protest; and
 - b. Supporting the protestor's claim of standing.
- ii. Deadline for Filing
 - 1. A protest relating to an open RFQ, IFB, RFP, or RFSQ, shall be filed with the Town Recorder before the closing date for the RFQ, IFB, RFP, or RFSQ.
 - 2. If the bid has closed, a protest shall be filed with the Town Recorder within five (5) business days (by the end of the Town's business day) after the person filing the protest knew or should have known the facts.
 - a. It is the responsibility of the person filing the protest to prove that they did not know and should not have known the facts which would give rise to a protest prior to the closing date.
- iii. Suspension of the Purchase – The Town may proceed with the protested purchase; however, the Purchasing Officer may suspend the purchase process for so long as deemed appropriate.
- iv. Review of the Written Protest – The Purchasing Officer will review the written protest and may request the following:
 - 1. Assistance of another individual in reviewing the matter, which may include finding facts, analyzing the protest, and making recommendations; and
 - 2. Additional information from the protesting party or from other Town staff to make a determination. The protesting party shall provide all information reasonably needed to decide the protest except information which is protected from disclosure by law, or which could reasonably be

expected to result in unfair, competitive injury to the protestor in spite of the protections for the protestor provided by law, including the Utah Governmental Records Access Management Act (GRAMA).

3. Written determination – the Purchasing Officer will issue a written determination to the protesting party within fifteen (15) days of the date the protest is received from the Town Recorder.
 4. If the Purchasing Officer fails to issue a decision within fifteen (15) days after receipt of the protest, said failure shall be considered the equivalent of a de facto denial.
- b. **Appeal of Written Protest** – The protesting party may appeal the written decision of the Purchasing Officer by filing a written appeal with the Town Recorder that will be sent to the Town Council.
- i. The Notice of Appeal shall contain the following information:
 1. The petitioner's name, mailing address, e-mail address, daytime telephone number, the signature of the petitioner or the attorney for the petitioner, date, and
 2. A concise statement of the facts and evidence sufficient to permit review:
 - a. Of the petitioner's claim that the petitioner has been aggrieved in connection with a purchase and providing grounds for the petitioner's protest; and
 - b. Supporting the petitioner's claim of standing.
 - ii. **Deadline for Filing** – The appeal must be completed within five (5) business days of receipt of the Purchasing Officer's decision or de facto denial.
 - iii. **Hearing** – the Town Council, or designee, shall review and schedule a hearing no later than five (5) days after receiving a notice of appeal. Unless otherwise agreed to by the Town and the petitioner, the hearing shall be held no sooner than 5 (5) business days and no later than thirty (30) business days from the date of the filing of the appeal. At the hearing, the appellant and the Town's representative(s) shall be allowed to testify, present evidence, and comment on the issues. The rules of evidence do not apply to this hearing. The Town Council may allow other interested persons to testify, comment, or provide evidence on the issues.

- iv. **Written Determination** – No later than fifteen (15) business days after the hearing, the Town Council shall issue a signed order either granting the petition whole or in part, or upholding the determination of the Purchasing Officer in whole or in part. If the Town Council fails to issue a decision within fifteen (15) business days after the hearing, said failure shall be considered the equivalent of a Defacto denial.
- c. **Appeal to Utah District Court** – Any final action or order may be appealed by either the potential vendor or the Town to the Utah District Court by filing with the court a notice of appeal.
- d. **Remedies** – If the Purchasing Officer or Town Council determines that a solicitation or award is in violation of federal, state, local law, or this policy, the following remedies shall apply:
 - i. **Prior to Bid Closing Date** – If prior to a bid or proposal closing date the Purchasing Officer or Town Council determines that a solicitation is in violation of federal, state, local law, or this policy, the solicitation or proposal shall be canceled.
 - ii. **Prior to Award** – If after a bid or proposal closing date the Purchasing Officer or Town Council determines that a solicitation or a proposed award of an agreement is in violation of federal, state, or local law, or this policy, the solicitation or proposed award shall be canceled.
 - iii. **After Award** – If after an award of a bid or proposal, the Purchasing Officer or Town Council determines that a solicitation or award of an agreement was in violation of applicable laws or this policy, then:
 - 1. The person awarded the agreement has not acted fraudulently or in bad faith:
 - a. The agreement may be ratified and affirmed, provided it is determined that doing so is in the best interest of the Town; or
 - b. The agreement may be terminated and the person awarded the agreement shall be compensated for the actual costs reasonably incurred under the agreement, plus a reasonable profit, prior to the termination;

2. If the person awarded the agreement has acted fraudulently or in bad faith, the agreement may be declared null and void or voidable, if such action is in the best interests of the Town.