

Town of Dayton
Procurement Policy

Statement of Intent

Towns under 3,500 population, which includes the Town of Dayton, are not subject to the procurement policies and procedures established by the Commonwealth of Virginia in Title 2.2, Chapter 43, Virginia Public Procurement Act.

The Town Council has established this policy pertaining to the Town's procurement from nongovernmental sources to permit the Town to obtain high quality goods and services at reasonable cost. The Council's intent is to ensure that all procurement procedures are conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded. Council also intends that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, while providing flexibility in establishing the details of such competition. The rules governing how a contract is to be awarded is to be made in advance of the competition. The specifications for the purchase are to reflect the procurement needs of the Town rather than being drawn to favor a specific vendor.

The Town may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

ETHICS IN PUBLIC CONTRACTING

No Town official having responsibility for a procurement transaction shall participate in the transaction on behalf of the Town when the official or employee knows that:

The official is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or,

The official, the official's partner, or any member of the official'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 of more than five (5) percent; or, The official, the official's partner, or any member of the official's immediate family has a pecuniary interest arising from the procurement transaction; or The official, the official's partner, or any member of the official's immediate family is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror or contractor.

Solicitation or acceptance of gifts.

No Town official having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Definitions

As used in this policy:

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is the method of contractor selection set forth in this policy.

"Competitive sealed bidding" is the method of contractor selection set forth in policy.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Official" means any person, who either holds an elected office in the Town, or is an employee in the Town, who has an official responsibility for a procurement transaction.

"Potential bidder or offeror," for the purposes of this policy, means a person who, at the time the Town negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.

"Public contract" means an agreement between the Town and a nongovernmental source that is enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

"Town" means the Town of Dayton, a municipal corporation, its Council, Town Superintendent and officials.

Process for competitive sealed bidding.

The process for competitive sealed bidding shall include the following:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. The Invitation to Bid shall include a statement of any qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;
2. The Town will provide public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Town's website. In addition, the Town may publish notice in a

newspaper of general circulation. In addition, the Town will solicit bids directly from potential contractors;

3. Public opening and announcement of all bids received;
4. Evaluation of bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and
5. Award to the lowest responsive and responsible bidder. An award may be made to more than one bidder if it is provided in the terms and conditions in the Invitation to Bid.

Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors to be used in evaluating the proposal. If the Town will use a numerical scoring system to evaluate the proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal;
2. The Town will post on the Town's website the public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals. Additionally, the Town may publish the notice in a newspaper of general circulation. In addition, the Town may solicit proposals directly from potential contractors; and
3. Selection process for goods, nonprofessional services, and insurance. The Town shall select from two or more offerors deemed to be fully qualified and best suited among those submitting proposals, based on the factors involved in the Request for Proposal, including price if it is stated in the Request for Proposal. Negotiations shall be conducted with each of the selected offerors. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the Town shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Town determine in writing and in its sole discretion that only one offeror is

fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the Town shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable based upon initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews are permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the Town in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. The Town shall not disclose to the public or to competitors any proprietary information from competing offerors. The Town shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Town can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the Town, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, the Town may award contracts to more than one offeror.

Should the Town determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

Methods of procurement.

A. All contracts in excess of \$50,000 with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded by the Town Superintendent after competitive sealed bidding, or competitive negotiation as provided in this policy. Contracts in excess of \$100,000 shall be awarded by the Town Council using whatever procedure that

Council decides to use in any given instance, provided that such procedure is in compliance with law. Council approval of any contract, regardless of amount and the procedure used, shall be deemed compliance with the Procurement Policy.

B. All contracts for professional services shall be procured by competitive negotiation.

C. Goods, services other than professional services, and insurance may be procured by competitive sealed bidding or competitive negotiation. If the Town Council authorizes in advance, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker. The basis for this determination shall be documented in writing.

D. Upon a determination in writing that there is only one source practicably available for the item to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The Town shall include a written notice in the contract file stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded.

E. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the contract file.

F. Small purchases. Purchases less than \$50,000 shall follow the procedures established in this policy.

Small Purchases.

Any purchase not exceeding \$50,000.00 may be acquired with small purchase procedures; provided, however, that contract requirements shall not be artificially divided to qualify for a small purchase under this policy. Procedures to be used when purchasing under this section are as follows:

1. Contracts of less than \$500 for the purchase of goods or services may be awarded without any procurement process as long as the individual making the purchase has no reason to believe that equivalent goods or services are available at a lower cost elsewhere.
2. Contracts of greater than \$500 but less than \$10,000 for the purchase of goods or services may be awarded by, if reasonably possible, obtaining written price quotations from at least two vendors. Price quotations can be secured via telephone, catalog, internet, or written inquiry.

3. Contracts of \$10,000 but less than \$50,000 for the purchase of goods or services may be awarded by, if reasonably possible, obtaining written price quotations from at least three vendors. Price quotations can be secured via telephone, catalog, internet, or written inquiry.

Emergency purchases.

In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the contractor shall be included in the contract file. The Town shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a duly designated public area on the day the Town awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. An emergency shall be deemed to exist when:

1. A breakdown in machinery or equipment causes a threatened termination of essential services or a dangerous condition to develop;
2. Any unforeseen circumstances arise causing curtailment or diminution of an essential service; or
3. Materials or services are needed to prevent loss of life or property

Purchase Orders

Purchase orders are required for all purchases in excess of \$500. Except in the case of emergency purchases, a purchase order is to be completed and executed by the Town Superintendent or designee in advance of the purchase. Purchase orders are to include:

- An accurate description of the item(s) purchased, including per unit cost, if applicable
- Delivery instructions, if applicable
- Account code to be used for purchase
- Bids, quotes or other competitive pricing information shall be attached to the purchase order

Exceptions to requirements for competitive procurement.

The following are excepted from competitive procurement requirements:

1. Purchases from the Commonwealth of Virginia, or any political subdivision thereof.
2. Expert witnesses, and other services associated with actual or potential litigation, or regulatory proceedings.
3. Federal surplus property.
4. Purchases under contracts awarded by the Commonwealth of Virginia Department of Purchases and Supply.
5. Purchases under a contract awarded by a local government or planning district in Virginia where the original bid or proposal allows other local governments to utilize the pricing (cooperative bid/proposal).
6. Purchases for special police work when the Police Chief certifies to the Town Superintendent that the items are needed for undercover police operations.
7. Extension of the term of an existing contract for services to allow the completion of any work undertaken but not completed during the original term of the contract.
8. Legal services and third parties hired by the Town attorney, including but not limited to title companies, surveyors, and appraisers.
9. Contracts for insurance if purchased through an association of which the Town is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the Town has made a reasonable determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public.
10. Upon determination made in advance by the Town and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interest of the public, such items may be purchased at the auction.

DISPOSAL OF SURPLUS PROPERTY

Each department shall submit an annual report to the Town Superintendent showing inventory of all supplies and equipment which are no longer used, or which have become obsolete, worn out or scrapped. The Town Superintendent shall present the list of surplus property to Council for approval.

The Town Superintendent shall sell or otherwise dispose all items declared surplus by Council, including using, at his discretion, on-line sales auctions, competitive bid, sealed bids, third party auctions, or other methods, or may exchange the same for, or trade in the same on, new supplies and equipment.

Approved by Council _____, 2019

